SUPREME COURT OF THE UNITED STATES.

No. 179.

THE BARK GRAPESHOT, GEORGE LAW, CLAIMANT,
APPELLANT,

VS.

WALLERSTEIN, MASSET & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX TO VOLUME I.

	Original.	Print.
Libel, (Durant & Horner, proctors,) July 3d, 1858	bis. 1	1
Bottomry bond annexed to libel, July 3d, 1858	7	3
Admiralty warrant *vs.* barque and return, July 3d, 1858.	10	4
Admiralty warrant *vs.* freight and return, July 3d, 1858.	12	5
Document "A" annexed to letter, July 3d, 1858.	14	6
Account of freight, charges and deposite, July 3d, 1858	16	7
Motion and order of sale of bark, July 10th, 1858	18	7
Venditioni exponas, return of ac., sales and deposite, July 21st, 1858.	19	8
Claimant's exceptions to libel, Nov. 1st, 1858	22	9
Hearing and submission of exceptions, Mar. 5th, 1859	24	10
Reasons of his honor for overruling exceptions, Mar. 14th, 1859	25	11
Decree overruling exceptions, Mar. 15th, 1859	26	11
Answer, (Bonford, Singleton & Clack, proctors,) Nov. 1st, 1858	27 to 77	12 to 30
Documents A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, Q, R, S, T, U, V, W, X, and Y, annexed to and filed with answer, charter-parties, bill of sale, letters, &c	77 to 123	30 to 48
Amended and supplemental libel, Nov. 8th, 1858	123	48

PROCEEDINGS.

	Original.	Print.
Affidavit of libellants for commission, Nov. 8th, 1858	126	49
Marshal's return of service of libellant's interrogatories on claimant, Nov. 8th, 1858	127	49
Commission issued to Rio for libellants. See nota, Nov. 9th, 1858.		
Claimant's motion and order for commission, with cross-interrogatories to Rio, Dec. 18th, 1858	128	50
Commission, with cross-interrogatories issued to Rio. See nota, Dec. 18th, 1858.		
Commission issued and depositions filed. See nota, 1858-1859.		
Rule on claimant for reading of depositions for libellants, received from Rio, May 16th, May 5th, 1859	131	51

	Original.	Print.
Claimant's exceptions to rule, May 28th, 1859	132	51
Order allowing reading of depositions, May 30th, 1859	134	52
Hearing, note of evidence and submission, Dec. 10th, 13th, and 14th, 1859	135 to 138	52

EVIDENCE FOR LIBELLANTS.—FILED.

	Original.	Print.
Deposition of Jos. S. Clark, taken at Rio, Feb. 8th, 1859	141 to 153	55
Advertisement for bottomry filed with above, and U. S. consul's certificate	153	59
Depositions of Geo. J. Esling, John F. McLennan, and Wm. Knight, (taken at Rio,) on interrogatories and U. S. consul's certificate, Feb'y 8th, 1859	154	59
Account "A," sale of salt, Feb'y 8th, 1859	174	65
Account "B," with Rostrom, Dutton & Co., annexed to Wm. Knight's depositions, Feb'y 8th, 1959	176	66
Proposal to advance money in Portuguese and English and U. S. consul's certificate, Feb'y 8th, 1859	180	69
Port charges and disbursements, annexed to Wm. Knight's deposition and U. S. consul's certificate, Feb'y 8th, 1859	182	69
Harrah and McLennan's account, and U. S. consul's certificate, Feb'y 8th, 1859	185	71
Esling and Alvarengas' account, and certificate, Feb'y 8th, 1859	188	72

EVIDENCE ON STANDING, CHARACTER ETC., OF ROSTROM, DUTTON & CO.

	Original.	Print.
Testimony of George Nathan, P. A. Giraud, taken in open court, Dec. 15, 1859	198 to 199	77
Opinion and decree of the court, Jan'y 31st, 1860	201	79
Decretal order in favor of libellant, Jan'y 31st, 1860	221	86
Claimant's rule, and grounds for rehearing, Feb'y 3d, 1860	222	86
Hearing and submission of rule, Feb'y 11th, 1860	224	87
Refusal of rehearing and final decree, Feb'y 27th, 1860	225	87
Motion and order of appeal, March 1st, 1860	227	88
Appeal bond	229	88
Clerk's certificate	230	89
Clerk's certificate	231	89
Judge's do	332	90
Nota. (See vol. II for claimant's evidence.)		"

INDEX TO VOLUME II.

EVIDENCE OF CLAIMANT.

	Original.	Print.
Depositions of John C. Eilers, Philip Myers, Hermann Fisher, and Chas. Hillman, taken in New York by Commissioner R. E. Stillwell, Dec. 12th, 1859	1	91
Exhibit A to Phil. Myers' deposition	193	148
" B, Rostrom Dutton's account to same	196	150
" C, sundry bills at Rio, (in. R. and D. & Co. general account)	200	151
" D, sundry bills at Rio, not mentioned in R. and D. account, No. 1 to 7 inclusive	214	159

	Original.	Print.
Exhibit E, Esling & Alvavengas' account, and notes of descrepancies between, and account of R., 1,121.859, receipted 17th April, 1858.	226	165
Exhibit F, items in ditto	236	173
Letter of Capt. Clark to Geo. Law, annexed to Myers' deposition, June 6th, '58	240	175
Exhibit U U, No. 1, hospital money, and return annexed to Philip Myers' deposition	243	175
Exhibit K K, U. S. consul's bill	252	179
" R R, Esling & Alvarengas' account, annexed to Myers' deposition	254	179
Exhibit O O, U. S. consul's certificate of clearance to "Good Hope," annexed to deposition of H. Fisher	258	182
Exhibit M M, No. 10, permit from Don Manuel, V. Y. Sellers to Capt. Clark, to take salt to Buenos Ayres, annexed to Fisher's deposition	260	182
Exhibit Q Q, No. 7, E. Close acount, annexed to Hillman's deposition	264	183
" P P, Brown & Moore's account, annexed to Hillman's deposition.	265	184
" P P, No 2, John Enge account to same	265	184
" A, No. 1, Harrah & McLennan's account	266	185
Deposition of Alfred Moulton, and documents A, B, C, and D, taken in court, Dec. 13, 1859	272	187
Deposition of A. F. Elliot, taken in court, register of barque "Grapeshot	283	191
Inventory of barque	287	192
Deposition of John Graham, taken in New York, Dec. 12th, 1859, (de bene esse,) and clerk's certificate	289	193
Deposition of W. S. Hanford, (taken as above,) and Exhibit A annexed	293 to 295	195
Deposition of John Sims, (taken as above,) and Exhibit G G, No. 7, annexed	297	197
Deposition of N. W. Thaxter, Boston, (de bene esse,) for claimant and exhibits "A, B, C, D, and E," annexed	306	200
Admission in court as to testimony of Robert Howe, (absent)	318	204
Memorandun of consular returns offered by claimant	319	205

ARRIVALS AND DEPARTURES OF AMER. VESSELS, CONSTANTINOPLE.

Quarter ending Mar. 31st, 1857	320	206
Quarter ending June 30, "	321	206
Malaga, quarter ending Mar. 31, 1857	325	206
Malaga, quarter ending June 30, 1857	326	206

APPROXIMATE STATEMENT OF EXPORTS FROM MALAGA TO THE U. S.

Quarter ending Sept. 30, '57	328	206
Arrivals and departures, Malaga, quarter ending Sept 30, '57	332	206
do " Malta, during 1857	340	206

ARRIVALS AT AND DEPARTURES FROM RIO DE JANEIRO, OF AMERICAN VESSELS.

Quarter ending 30th Sept., '57	348	206
Quarter ending 31st Dec. '57	359	206
Quarter ending 31st Mar., '58	370	206
Quarter ending 30th June, '58	374	206

STATEMENT OF NAVIGATION AND COMMERCE OF THE U. S. AT RIO.

	Original.	Prin .
During quarter ending 30th June, '58	379	207

CLOSE OF EVIDENCE.

Clerk's certificate	382	208
Clerk's certificate	383	208
Judge's certificate	384	208
Nota	385	209

INDEX TO VOLUME III.

Order continuance, June 12, 1860	1	211
Hearing and submission of application for continuance, June 13, 1860	2	211
Brief of libellant, Oct. 9, 1860	2	211
Additional brief of libellant, Oct. 11, 1860	15	216
Opinion of Judge Campbell, Nov. 10, 1860	16	216
Decretal order, Nov. 12, 1860	27	217
Interrogatories of libellants, Nov. 20, 1860	28	221
Motion for payment of costs, Dec. 18, 1860	36	224

PROCEEDINGS IN U. S. PROVISIONAL COURT FOR THE STATE OF LOUISIANA.

Motion to remove cause to U. S. Provisional Court, Jan'y 13, 1863	38	224
Same, Jan'y 14, 1863	39	225
Consent to transfer cause, March 25, 1863	40	225
Order authorizing transfer of cause, March 25, 1863	41	225
Commission issued, June 13th, 1863	42	226
Commission returned and filed, Dec'r 23, 1863	62	233
Interrogatories and cross-interrogatories, annexed to commission, and also deposition, Dec'r 30, 1863	63	233
Hearing and order continuance, Dec'r 30, 1863	111	249
Hearing and submission of cause, Dec'r 31, 1863	112	249
Document filed in evidence for claimant, Dec'r 31, 1863	113	249
Reasons for judgment, filed June 13, '64	113	249
Judgment for plaintiffs, June 13, '64	130	225

PROCEEDINGS IN THE U. S. CIRCUIT COURT, FIFTH CIRCUIT AND DISTRICT OF LOUISIANA.

Notice of claimant filed, July 26, 1866	132	256
Motion to docket cause, Dec. 1, 1866.	133	256
Petition for appeal, and order allowing same, Dec'r 6, 1866	134	256
Bond for appeal, Dec'r 6, 1866	139	258
Citition of appeal	143	260
Clerk's certificate	141	259
Judge's do.	142	260
Service of citation of appeal	144	260
Nota	145	260

1

ad
&
Ba
Yo
He
fo
Si

1*b*

W

Vo

To

Ja
sh
tra
ag
ba

2

“(
pa
pa
th
ba
th
th
Cl
Cl
an
“
tio
tir
in
Or
sa
co

1 United States of America, eastern district of Louisiana, fifth circuit. United States Circuit Court, No. 3,301, sitting in admiralty. Appeal from U. S. District Court. Wallerstein, Massett & Co., of Rio de Janeiro, libellants. In cause of bottomry, *vs.* The Barque Grapeshot, her proceeds, and freight, George Law, of New York, claimant, and herein appellant. Proctors: Mess. Durant and Horner, for lib'ts, appellees. Proctors: Bonford, Singleton and Clark for claimant and appellant. Vol. or part 1st. Filed 26th May, 1860. Sig. J. W. Gurley, clerk. Proceedings, [proceedings,] libellant's evidence and final decree and appeal.

1*bis.* United States District Court for the eastern district of Louisiana.

Wallerstein, Masset & Company }
vs. } 7,370.
Bark "Grapeshot." }

Vol. or part first of transcript, filed May 26, 1860. *Libel with bottomry bond, filed July 3d,* 1858.

To the Honorable Theo. H. McCaleb, judge of the District Court of the U. States for the eastern district of Louisiana:

The libel and complaint of Wallerstein, Masset & Co., of Rio de Janeiro, in the empire of Brazil, merchants, against the bark "Grapeshot," her tackle, apparel, and furniture, and the freight due for the transportation of her cargo from said Rio to New Orleans, and against all persons lawfully intervening for their interest in the said bark, in a cause of bottomry, civil and maritime.

And thereupon the said Wallerstein, Masset & Co., alleged,
2 and articulately propounded as follows:

First. That in the month of April, 1858, the said bark "Grapeshot," then lying in the port of Rio, was in great need of reparation, provisions, and other necessaries, to render her fit and capable of proceeding from thence on her then intended voyage to this port of New Orleans; and Joseph S. Clark, the master of said barque, not then having any funds or credit there, and the owners of the said bark not residing in Rio and having no funds or credit there, these libellants did, at the request of the said Joseph S. Clark, the master, advance and lend to him, the said Joseph S. Clark, the sum of nine thousand seven hundred and sixty-seven dollars and forty cents on the bottomry and hypothecation of the said bark "Grapeshot," on the adventure and risk thereof as hereinafter mentioned, and at the rate of nineteen and one-half per centum maritime interest, for the reparing, vitualing, and manning of the same, in order to enable her to proceed from thence to the said port of New Orleans; and the said Joseph S. Clark did really and truly expend the said sum for the purposes aforesaid; and the said bark "Grapeshot" could not possibly have proceeded with safety upon her said voy-

age, without such repairs and other necessary expenses attend-
3 ing the refitting her for the voyage aforesaid.

Second. That on the fifteenth day of April, 1858, the said Joseph S. Clark, master as aforesaid, in pursuance of the agreement of bottomry and hypothecation as aforesaid, in order to secure the repayment of the said sum of nine thousand seven hundred and sixty-seven dollars and forty-five cents, so lent and advanced by the said libellants for the purposes mentioned in the next preceeding article, and also the payment of nineteen hundred and four dollars and sixty-five cents, the amount of the maritime interest, according to the rate mentioned in the next preceding article, did, in the behalf of himself and the owners of said bark "Grapeshot," execute a certain bottomry or hypothecation bond, whereby, among other things, he bound himself and the said bark "Grapeshot," with her freight, tackle, apparel, and furniture, to pay to the said libellants, their attorneys, executors, administrators, or assigns, the sum of nine thousand seven hundred and sixty-seven dollars and forty-five cents at or before the expiration of 20 days after the arrival of the said bark in the said port of New Orleans, on and from her then intended voyage from the port of Rio, as aforesaid; and it was also de-
clared, in the said bond, that all risks of the seas, enemies,
4 rivers, fires, pirates, &c., for the said voyage, were to be on
account and at the peril of these libellants, all of which, by
the said hypothecation bond, a copy of which is hereunto annexed, it having been made in duplicate, and marked with the letter "W," whereto these libellants crave leave to refer, does fully appear.

Third. That the said bark "Grapeshot" sailed on the said voyage, and arrived safe at the port of New Orleans from the port of Rio, aforesaid, on or about the seventh day of June, 1858, and then and there delivered her cargo; and that after the expiration of twenty days from her said arrival, the bond was, on behalf of the libellants, tendered for payment by Theodore Briere, to whom it had been transferred by libellants for collection, to the said Joseph S. Clark, the master, but that he has refused to discharge the same, and still refuse so to do, to the damage of libellants the sum of twelve hundred dollars, and it may be more.

Fourth. That the cargo of the said bark Grapeshot, on the voyage aforesaid, was consigned to Negroponte & Angelasto, merchants of New Orleans, who have received the same, and now owe the freight
thereon, amounting to two thousand and fifty-five dollars,
5 which is hypothecated to libellants, and which the said Negro-
ponte and Angelasto should be required to deposite in the
registry of this honorable court to await the result of this suit.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification thereof, if denied, the libellants crave leave to refer to the depositions and other proofs, to be by them exhibited in this cause.

Wherefore the libellants pray that process, in due form of law, according to the course of admiralty and maritime jurisdiction, may issue against the said bark "Grapeshot," her tackle, apparel, furni-

ture, and freight, wheresoever the same shall be found; and that the owners of said bark, and all persons having or pretending to have any right, title, or interest in said bark, may be called to appear and answer under oath, all and singular the matters so articulately propounded; and that this honorable court would be pleased to pronounce for the amount of the bond, interest, and damages aforesaid, and for such other relief to the libellants as shall to law and justice appertain; and also to condemn the said bark "Grapeshot,"
6 her tackle, apparel, furniture, and freight, and the owners, and all persons intervening for their interests in costs.

(Signed) TH. BRIERRE.
Agent of Wallerstein, Masset & Co.
DURRANT & HORNER,
Proctors libellants.

IN UNITED STATES DISTRICT CLERK'S OFFICE,
New Orleans, July 3d, 1858.

Before the undersigned authority, personally appeared Th. Brierre, who subscribed the foregoing libel, and made solemn oath that he is the agent, in this city, of Wallerstein, Masset & Co., of Rio de Janeiro; and that the allegations of the foregoing libel are, as he has good reasons to believe, and does verily believe, true and correct.

H. R. JENNINGS, *Clerk.*
("Signed") WILLIAM BULLITT, *Dy. Clk.*

7 United States District court, eastern district of Louisiana.

WALLERSTEIN, MARSET & CO. *vs.* "BARK GRAPESHOT." } 7,370.

Bottomry bond, being the document marked "W," and referred to as such in the original libel of Wallerstein, Marset & Co.

Know all men by these presents, that I, Joseph S. Clark, now master and commander of the bark or vessel called the "Grapeshot," of the burden of 345$\frac{2}{95}$ths tons or thereabouts, now lying in the port of Rio de Janeiro, am held and firmly bound to Wallerstein, Masset & Co., of this city of Rio de Janeiro, in the sum of nineteen thousand five hundred and thirty-four dollars and ninety cents, lawful money of the United States of America, to be paid to the said Wallerstein, Masset & Co., or to their certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, I bind
8 myself, my heirs, executors, administrators, and also the said vessel, her tackle, apparel, and furniture, firmly by these presents.

Sealed with my seal at Rio de Janeiro, this fifteenth day of April, in the year of Lord of our Lord one thousand eight hundred and fifty-eight.

Whereas the above bounden Joseph S. Clark has been obliged to take up and borrow, and hath received of the said Wallerstein, Masset

& Co., for the use of said vessel, and for the purpose of fitting the same for sea, the sum of nine thousand seven hundred and sixty-seven dollars and forty-five cents, lawful money of the United States of America, which sum is to be and remain as a lien and bottomry on the said vessel, her tackle, apparel, and furniture, and freight, at the rate or premium of nineteen and a half per cent. for the voyage, in consideration whereof all risks of the seas, rivers, enemies, fires, pirates, &c., are to be on account of the said Wallerstein, Masset & Co.; and for the better security of the said sum and premium, the said master doth by these presents hypothecate and assign over to the said Wallerstein, Masset & Co., their heirs, executors, administrators, and assigns, the said vessel, her tackle, apparel, furniture, and
9 freight; and it is hereby declared that the said bark "Grapeshot" is thus hypothecated and assigned over for the security of the money so borrowed and taken up as aforesaid, and shall be delivered for no other use or purpose whatever until this bond is first paid, together with the premium hereby agreed to be paid thereon.

Now the condition of this obligation is such, that if the above bounden Joseph S. Clark shall well and truly pay, or cause to be paid, unto the said Wallerstein, Masset & Co., or their assigns, the just and full sum of nine thousand seven hundred and sixty-seven dollars and forty-five cents lawful money as aforesaid, being the sum borrowed, and also the premium aforesaid, at or before the expiration of twenty days after the arrival of the said vessel at New Orleans, in the United States of America, then this obligation and the said hypothecation to be void and of no effect, otherwise to remain in full force and virtue. Having signed and executed three bonds of the same tenor and date, one of which being accomplished, the others to be void and of no effect.

[SEAL.] (Signed) JOSEPH S. CLARK.

Signed, sealed, and delivered in presence of—
JNO. S. MUSHARDT, Jr.
H. M. CORDENIR.

10 CONSULATE OF THE U. S. OF AMERICA,
at Rio de Janiero.

I, Robert G. Scott, jr., consul of the United States of America, at this city of Rio de Janeiro, do hereby certify that Jos. S. Clark, master of the bark "Grapeshot," of New York, the party to the aforesaid bottomry bond or instrument of writing, personally came before me and executed the said bond in my presence and in the presence of the witnesses thereunto, and acknowledged the same to be his free act and deed for the purposes therein mentioned.

Given under my hand and seal of office, this 15th day of April, A. D. 1858.

[SEAL.] (Signed) ROBERT G. SCOTT, JR.

Pay to the order of Chas. Brierre, esq., Rio de Janeiro, 15th of April, 1858.

(Signed) WALLERSTEIN, MASSET & CO.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your
11 possession take the bark "Grapeshot," her tackle, apparel, and
furniture, &c., now libelled by Wallerstein, Masset & Co., of Rio
de Janeiro, in a cause of bottomry, civil and maritime, in which they claim the sum of eleven thousand six hundred and seventy-two dollars and ten cents ($11,672 10) interest, &c., as is more fully set forth in their libel now pending in the District Court of the United States, for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have, any right, title, or interest in or to the same, to be and appear before a District Court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said bark "Grapeshot," her tackle, apparel, &c., should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the Honorable Theodore H. McCaleb, judge of the said court at New Orleans, this third of July, 1858, and the eighty-second year of the independence of the United States.

[SEAL.] (Signed) N. R. JENNINGS, *Cl'k.*
By ROBT. M. LUSHER, *D'y Cl'k.*

12 *Marshal's return.*

Rec'd July 3d, 1858, and on the same day I seized and took into my possession the said bark "Grapeshot," her tackle, apparel, and furniture. On the 4th day of July, 1858, and on each day thereafter, until and including the 18th day of July, 1858, I published monition thereof, according to law, and the rules of court, by publishing the same in the Louisiana Courier, a daily newspaper printed and published in the city of New Orleans. And I do now hold in my possession the said bark Grapeshot, her tackle, apparel, and furniture, subject to the further order of this honorable court. Returned July 20, '58.

(Signed) EMILE MARY, *D'y Marshal.*

The President of the U. S. of America to the marshal of the eastern district of La., or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, in the hands of Negroponte and Angelusto, the freight owing by them on cargo brought
from Rio de Janeiro per bark Grapeshot, say two thousand
13 and fifty-five dollars, now libelled, together with said bark, by
Wallerstein, Massett & Co., of Rio, on a bottomry bond of record, as set forth fully in the libel now pending in the District Court of the United States for the eastern district of Louisiana; that you do cite and admonish the owners, and all and every other person or persons having, or pretending to have any right, title, or interest

in or to the same, to be and appear before a District Court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said freight, say $2,055 00, should not be deposited in the registry of this court, to abide its decree, agreeably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the Honorable Theodore H. McCaleb, judge of the said court at New Orleans, this third day of July, 1858, and the eighty-second year of the independence of the United States.

[SEAL.] (Signed) ROBERT M. LUSHER, *D'y Clerk.*

14 *Marshal's return.*

Received July 3d, 1858, and on the same day, I served the within on the said Negroponte & Angelusto by delivering personally a copy thereof to Mr. Berachi, their agent, said service made at the office of the Greek consul, in the city of New Orleans, the said Negroponte & Angelusto being absent at the time; and on the same day, and at the same time I delivered personally to said Mr. Berachi, agent, a copy of the notice of seizure hereto annexed, marked "A," and made a part hereof.

Returned July 20th, 1858.

(Signed) EMILE MAY, *D'y Marshal.*

United States District Court, eastern district of Louisiana.—7,370.

Doc. marked "A," attached to and forming a part of the marshal return on the Ad.—Warrant for seizure of freight.

WALLERSTEIN, MARSET & CO.
vs.
BARK "GRAPESHOT," &c.
} No. 7,370.

15 UNITED STATES MARSHAL'S OFFICE,
Eastern District of Louisiana.

To Mr. Benachi, agent of Negroponte & Angelusto:

Please to take notice that by virtue of a writ of attachment to me directed by the hon'l. the District Court of the United States, in the case of Wallerstein, Masset & Co. *vs.* Bark "Grapeshot," I seize in your hands the goods and chattels, lands and tenements, rights, credits, moneys, effects, or property of any kind which you may now or hereafter have belonging to the said defendant, bark "Grapeshot," or as much thereof as will satisfy this writ, say the sum of $2,055 [dollars,] with interest and costs, which sum you will please pay over to me without delay, in satisfaction of the said writ of attachment.

New Orleans, July 3d, 1858.

Your obedient servant,

J. M. KENNEDY,
U. S. Marshal.
By EMILE MARY, *D'y.*

16 United States District Court, eastern district of Louisiana.

WALLERSTEIN, MARSET & Co.
vs.
BARK GRAPESHOT, &c.
} 7,370.

Account of freight and charges; memorandum of deposit in registry by Messrs. Negroponte and Angelusto.

Memorandum of Captain Joseph S. Clarke, of bark "Grapeshot," of freight on a cargo of 3,800 bags of coffee, consigned by Messrs. A. Ralli & Co., of Rio de Janeiro, to Negroponte & Angelusto, of New Orleans.

1858.			
June 28th.	Freight on 3,800 bags of coffee, as per charter-party, at 55c. per bag	$2,090	00
	Primage, 5 per cent.	104	50
		$2,194	50
	Off.		
June 8th.	Paid custom-house entrançe	$38	70
	Quaranteen fees	19	00
	Fees for entrance	5	00
17	Fees for surveys	8	00
	One bag of coffee taken by the captain, 163½ lbs., at 10 cents	16	35
	Commission on freight, 2½ per cent., 52 25	139	30
	Ballance	$2,055	20

New Orleans, June 28th, 1858. Ppt. Negroponte & Angelusto.
(Signed) N. M. BENACHI.

Two thousand and fifty-five 20-100 dollars deposited in registry of United States District Court by Messrs. Negroponte & Angelusto, per N. M. Benachi, esq., agent, this sixth July, 1858.
(Signed) ROBERT M. LUSHER,
D'y Clerk and Registrar.

United States District Court, eastern district of Louisiana.

WALLERSTEIN, MARSET & Co.
vs.
"BARK GRAPESHOT."
} 7,370.

Motion for and order of sale filed July 10th, 1858.
Order received from his hon'r entered and filed July 21st, 1858.

18 IN CHAMBERS,
Saturday, July 10th, 1858.

Hon. THEO. H. MCCALEB, judge.

On motion of Durant & Hornor, proctors for libellants herein, and on showing to the court that heretofore, to wit, on the 3d July,

1858, admiralty process issued herein against the bark "Grapeshot," her tackle, apparel, furniture, and freight, under which writ the U. S. marshal now holds her in custody; and on further showing that the demand of libellants is based on a bottomry bond, which precludes the claimants from bonding, even if they so desired, which they do not, as will appear by the reference to the annexed statement of their proctors; and on further showing that the bark "Grapeshot" will necessarily deterioate during the summer months, and the time which must necessarily elapse before the trial hereof, to the prejudice of all interested, it is therefore now ordered by the court that the bark "Grapeshot," her tackle, apparel, and furniture be sold by the marshal, on fifteen days' public notice, and that a vendition exponas issue accordingly; and it is further ordered that the marshal bring the proceeds of such sale into the court, and pay the same to the clerk and
19 registrar thereof, to abide the final decree in this cause.

(Signed) THEO. H. McCALEB,
U. S. Judge.

The claimant of said bark "Grapeshot," viz., George Law, of New York, refuses to bond the same, and has so instructed us.

(Signed) SINGLETON & CLARK,
Proctors for Claimant.

Filed July 10th, 1858, and certified to his honor the judge, at request and by consent of parties.

(Signed) ROBERT M. LUSHER, *D'y Clerk.*

United States District Court, eastern district of Louisiana.

WALLERSTEIN, MARSET & Co.
vs. } 7,370.
"BARK GRAPESHOT."

Vendition exponas issued July 21st; return filed August 30th, 1858.

United States District Court, eastern district of Louisiana.

WALLERSTEIN, MARSET & Co., on bottomry bond,
vs.
BARK "GRAPESHOT."

20 The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas, at a District Court of the United States, holden at New Orleans, for and within said district, on this 21st day of July, 1858, his honor Judge McCaleb sitting in admirality, in chambers, the bark "Grapeshot," with her tackle, apparel, furniture, and appurtenances, has, after due proceedings in the case, certified in the margin hereof, being ordered to be sold at public auction after fifteen days' advertisement; these are therefore to command you to sell to the highest bidder at public auction, at , within said district, on the day of , at o'clock , the said bark "Grapeshot," first giving fifteen days' notice at least of the time and place of sale by advertising the same in of the newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale, the money arising from the sale to be paid forthwith into the registry of the said court, to be disposed of as the law in this case directs; and make due return hereof, with your doings herein.

21 Witness the Honorable Theo. H. McCaleb, at New Orleans, this 21st day of July, A. D. 1858, and 83d year of the independence of the United States of America.

(Signed) ROBERT M. LUSHER, *D'y Clerk.*

Marshal's return.

UNITED STATES OF AMERICA, *Eastern district of Louisiana, ss:*

NEW ORLEANS, *Aug.* 18*th*, 1858.

Pursuant to this precept, I have caused the bark "Grapshot" within named to be sold by public auction and to the highest bidder, at Bank's Arcade, city of New-Orleans, to wit, at 12 o'clock, on the 6th day of August, 1858, the day, hour, and place therein directed; having given full fifteen days notice previously of the time, place, and manner of the sale in "The True Delta," "The Bee," and "The Bulletin," newspapers printed and published in the city of New Orleans, and by the crier, on the day of sale, and at such sale the purchasers were, as under Pierre A. Gerard, purchaser at the price and sum of fourteen thousand and two hundred dollars, ($14,200 00.)

Fees and expenses.

22 The fees and expenses, up to the day of sale, amount to the sum of three hundred and ninety-four dollars and fifteen cents, as per bill of same hereto annexed and made a part hereof, marked "A," $394 15.

Whereby the net sale amounted to thirteen thousand eight hundred and five dollars and eighty-five cents, which I pay over to the clerk of the court aforesaid, to be disposed of as the court direct.

Attest:

J. M. KENNEDY, *U. S. Marshal.*

$13,805 85 depos'd in the registry of U. S. District Court, September 2d, 1858.

N. R. JENNINGS, *Cl'k.*
By ROBT. M. LUSHER,
D'y Clerk, Reg'r.

United States District Court, eastern district of Louisiana.

Exceptions to libel.—Filed November 1st. 1858.

WALLERSTEIN, MARSET & CO.
vs.
BARK "GRAPSHOT." } 7,370.

The said George Law, owner and claimant, as set forth in 23 his claim heretofore filed, excepts to said libel as defective, insufficient, and irregular.

1st. Because the christian names of said "Wallerstein" and said "Masset," nor the christian and surnames of the other persons besides said Wallerstein & Masset, composing said alleged firm of Wallerstein, Masset & Co., are not set forth in said libel.

2d. Because no account or statement whatever of the particulars of said alleged repairs to said bark, either as to the nature, extent, or costs thereof, and no account or statement whatever of the particulars of said alleged supplies or provisions for said bark, or of the character, extent, or cost thereof, and showing that the said repairs and supplies were reasonable and necessary to enable said bark to prosecute her voyage to New Orleans, and a bona fide foundation for said alleged advance of $9,767 45, claimed to be the consideration of said alleged bottomry bond, hath been filed with said libel. Whereupon said George Law insists said libellants ought to be ordered by the court to amend their said libel in the respects above mentioned, within a reasonable time to be designated by the court, or that said libel be dismissed with costs, on account of said 24 defects, insufficiencies, and irregularities; and said claimant prays accordingly.

(Signed) GEORGE LAW.
SINGLETON & CLACK,
Proctor and of Counsel for G. Law, Claimant.

United States District Court, eastern district of Louisiana.

Minutes of the court.—February term, 1859.—*Stated sessions.*

WALLERSTEIN, MASSET & CO.
vs.
BARK "GRAPESHOT," &c. } 7,370.

SATURDAY, *March* 5, 1859.

Court met at 10 a. m. Present, Hon. T. H. McCaleb.

WALLERSTEIN MASSET & CO.
vs.
BARK "GRAPESHOT," &c. } 7,370.

The exceptions to the libel herein filed, Nov. 1st, 1858, by the claimant came regularly up for hearing, F. H. Clack, esq., appearing for said claimant, and Thos. I. Durant, esq., for the libellants. The supplemental libel, filed 8th Nov., 1858, was also read to the

25 court, together with the accounts or exhibits thereto annexed. After hearing authorities and argument on both sides, the court took the matter under advisement.

United States district of Louisiana, eastern district of Louisiana.

Reasons for decretal order overruling exceptions.—Filed March 14th 1,859.

Wallerstein, Masset & Co. *vs.* Bark Grapeshot, &c. } 7,370.

I have carefully considered the exceptions filed by the claimant to the sufficiency of the libel in this case. The first exception is strictly technical; and while I have no hesitation in saying that, as a general rule, the christian names of the libellants should be given, yet they may not in all cases be necessary. If there were any ground for supposing that there are, in Rio Janeiro, more than one firm doing business under the style of Wallerstein, Masset & Co., I should require the identity of the present libellants to he placed beyond all doubt. The court should, in a case where no doubt is suggested, be satisfied with substance, and especially when an order for a
26 strict compliance with mere form would subject a party to unnecessary expense and delay.

The second exception involves the question whether a libellant suing upon a bottomry bond should annex to his libel a detailed account of the costs and expenses of repairs, which are alleged to be the foundation of the loan secured by the bond. The instrument upon which the action is instituted is annexed to and filed with the libel. The necessity for the repairs will become a matter of proof hereafter, when the case is put at issue; and to render his proof clear, it will doubtless become necessary for the libellant to present an account or detailed statement of the disbursements made by the master. However this may be, it is not necessary that the account should be filed at this stage of the proceedings. The exceptions are overruled, and the claimant will answer over to the merits.

Pres., Hon. Theo. H. McCaleb.

Wallerstein, Masset & Co. *vs.* Barque Grapeshot, &c. } 7,370.

Monday, *March 14th,* 1859.

27 The court having examined and considered claimant's exceptions to the libel, doth, for reasons on file, order and decree the same be overruled.

United States District Court, eastern district of Louisiana.

Answer.—Filed November 1st, 1858.

WALLERSTEIN, MASSET & CO.
vs. } 7,370.
BARK "GRAPESHOT," &c.

To the honorable Theodore H. McCaleb, esq., judge of the District Court of the United States for the eastern district of Louisiana:

Reserving the exceptions heretofore filed, the answer of George Law, a citizen of the United States, of the State of New York, and residing in the city of New York, to the libel filed in said court, on the day of July, 1858, by Wallerstein & Masset, and styling themselves "Wallerstein, Masset & Co.," of Rio Janeiro, in the empire of Brazil, merchants, against the bark "Grapeshot," of New York, now lying at the port of New Orleans, in said district, her tackle, apparel, and furniture, and the freight due for the transportation
28 of her cargo from the said Rio to New Orleans, (now in the
registry of said court,) saving and reserving all exceptions to the insufficiences, and errors, irregularities of said libel, admits, alleges, and shows as follows:

First. This respondent admits and alleges that he was and is the owner of said bark "Grapeshot," of New York, her tackle, apparel, and furniture, in manner and form as is set forth and shewn in and by his claim heretofore, on the day of July, 1858, filed in this court, and in this cause to the same; and he also admits and alleges that said Joseph S. Clark was master thereof, and was interested in an undivided moiety thereof, in manner and form as is set forth and shewn in and by said claim, and not differently or otherwise.

Second. This respondent admits that on the 15th day of April, 1858, the said bark was lying in said port of Rio; and that said Joseph S. Clark was master thereof; and that said bark was then and there, on said day, laden with a cargo of coffee of 3,800 bags or upwards, to be carried on freight from Rio aforesaid, to said port of
29 New Orleans; and that said bark did sail with cargo from Rio
aforesaid, on or about the 17th day of April, 1858, and did arrive at New Orleans aforesaid, on or about the 8th day of June, 1858; and respondent alleges that he is entitled to have and to receive said freight on said cargo, as is set forth and shown in and by his said claim filed as aforesaid.

Third. This respondent admits that, as set forth in his aforesaid claim, it hath been represented to him by the said Clark, that he, the said Clark, just before he sailed from Rio aforesaid, executed a bottomry on said bark and freight; but he did not declare the names of the parties to whom it was given, and he represented the amount thereof to be $9,000; and this respondent was subsequently, June 16th, 1858, informed by telegram to him from the house of J. O. Woodruff & Co., of New Orleans, that it was $12,000; but this respondent alleges that, until he saw a certified copy of said libel and

of said bond, on the 27th of July, 1858, he was totally ignorant whether the same was a bond or a bill; and in fact, the agent of said libellant, Th. Brierre, who hath sworn to said libel, had informed this respondent, by telegram from New Orleans, dated June 9th,
1858, that he held "Grapeshot bottomry bill," and asked if he
30 should advance one thousand dollars for crew; and the respond-
ent was totally ignorant of the parties to whom such alleged bond or bill was given, although he sought diligently, from the time said bark arrived in New Orleans, to obtain information with respect to said alleged bottomry; and this respondent alleges tha the is yet uninformed as to the christian names of Wallerstein & Masset, or of the christian and surnames of the other person or persons composing said alleged firm of Wallerstein, Masset & Co.; and respondent says that, upon diligent inquiry at New York of sundry merchants engaged in the Rio trade, he hath been informed such commercial firm was entirely unknown to any of them, and that if such firm in fact existed at Rio, that the same was probably of recent formation, and of inferior and limited standing, and not connected with the trade or commerce between Rio and the United States, and that no citizens of the United States was connected therewith, and that beyond such representations and the information afforded by said telegram, and by said certified copy of said libel and said bond, the
respondent hath no knowledge or information of the parties to
31 said alleged bond, nor of the execution thereof, nor of the form,
contents, or tenor thereof; and respondent expressly alleges that said libellant and their agent, the Brierre aforesaid, and Joseph S. Clark, both before and since the filing of said libel, disregarding their duty in this respect, and acting in bad faith to this respondent thereby, have entirely neglected to disclose to this respondent any of the circumstances connected with the making of said bond, beyond said representations and the information so acquired by him as aforesaid, (and the said Joseph S. Clark hath, when requested by this respondent, at New-York, on or about the 13th day of July, 1858, utterly refused so to do;) and respondent further shows that there is not filed with said libel any account of the said alleged advances by said libellants, or any account of the alleged expenditure for repairs or provisions for said bark, to satisfy which said alleged advance was made; and respondent alleges that said libellants, and their said agent have also, as aforesaid, entirely neglected to disclose to this respondent the items or particulars of said alleged repairs to said bark, either as to labor or materials furnished, or as to the provisions
alleged to have been supplied to her and when supplied, and the
32 costs or expenses thereof, or as to the said alleged advances to
said Clark by libellant, and the different times the same were made, and how made, and in what sums or amount, and to exhibit to respondent and of the bills, accounts, receipts, vouchers, or acquittances, for said alleged repairs, either as to labor or materials, or for said alleged provisions, or for said alleged advances, as they ought and were bound to have done before the institution of this suit; but that said libellants and their said agent have concealed all of the same

from this respondent; and this respondent believes, and therefore expressly alleges that said alleged bottomry bond, and said suit instituted thereon, were and are fraudulent contrivances by and between said libellant and said Clark and others, combining and confederating together to cheat and defraud this respondent in the premises; and he insists that said libellants ought to be compelled by this honorable court to verify, by strict legal proof, the making and execution of said alleged bond by said Clark, and the day the same was made, and the circumstances connected therewith, and the exact consideration thereof, and whether for advances or
loans made previously or subsequently to the giving of said
33 bond in whole or in part, and whether said alleged advances
were to pay and satisfy bills for repairs previously made on said bark, or provisions and supplies previously furnished to her, or whether such repairs were made and provisions and supplies furnished subsequently to said alleged advances, and at what time said Clark first agreed to give said alleged bond, and the items and particulars of said alleged repairs and of the labor and materials furnished therefor, and of said alleged provisions supplied to said bark, and the cost and expense thereof, and of the particulars of said alleged advances and loan, and the different times, and how and in what sums or amounts the same were made, and to whom paid, and to produce and file and make due proof of all and singular the bills, accounts, receipts, vouchers, and acquittances for said alleged repairs, labor, and material provisions and advances, and likewise further to shew by strict proof that said alleged repairs were necessary, as alleged in said libel, and were made, and said provisions, supplies, and said advances or loans made, as alleged in said libel and said bond executed and delievered for the same, as therein alleged, in good faith, with reference to and towards this respondent.

34 Fourth. This respondent further alleges that said bark
"Grapeshot," of New York, said Jos. S. Clark, master thereof, and this respondent, the owner thereof, in manner and form, as is set forth by his claim filed as aforesaid, sailed from said part of New York, bound for Constantinople, with a cargo or freight, on or about the 9th day of February 1857; that said bark was stout, staunch, strong, tight, and in good order and condition, and well fitted and supplied with stores and provisions, and all other things necessary and sufficient for the said voyage and for the return voyage back to the home port of said bark, the said port of New York, which she was to make as hereinafter stated; that said bark arrived at Constantinople about the 14th day of April, 1857, and landed her said cargo safely and without any injury or damage having been sustained or suffered on said voyage either by said bark or her cargo; that said master received at Constantinople the freight earned by said bark on said voyage to said port, amounting to a large sum of money, to wit, the sum of $2,916 80-100 or thereabouts, exclusive of primage, and instead of causing the same, after retaining what was necessary to defray the current expense of said bark, to be remitted to this
35 respondent at New York from Constantinople, via England, or

otherwise, as he should ascertain at Constantinople was most certain, safe, expeditious, and convenient, according to his instructions from this respondent, he did then and there, at said port, covinously and fraudlently embezzle and keep the whole of the same, and subsequently, as hereinafter stated, did appropriate the same to his own use and benefit and to private and individual speculations and adventures, and for his own account and advantage; that the agreement and understanding between said master and this respondent, the owner of said bark, and the instructions by this respondent to said master, were also, that, after discharging said cargo at Constantinople, the said master should procure, if practicable, freight at Constantinople to Smyrna, Palermo, Malaga, or some other Mediterranean port, and after delivery of such freight at such port, to obtain if practicable a freight of fruits or other articles of merchandise, for the home port of said bark, the port of New York aforesaid, or some other port on the Atlantic coast of the United States, and if such freight could not be obtained at any such Mediterranean port, to re-
turn with all reasonable dispatch with said bark to said home
36 port; that said master could have readily procured at said port of
Constantinople a cargo of wool on freight to the aforesaid port of
Smyrna, of the value of $22,000 and upwards, on fair terms, which would have yielded to said bark as freight for such voyage to Symrna a large sum of money, and said master could likewise have obtained at Constantinople a freight of rags and wool from Symrna to the home port aforesaid of said bark on fair terms, which would likewise have yielded to said bark as freight for such voyage to her said home port a large sum of money; but said master, in order to carry out and effect his covinous and barratrous design and purpose of violating the agreement and understanding and instructions aforesaid, and of not returning with said bark to her said home port in conformity therewith, but of proceeding with said bark to Buenos Ayres, on the Rio Plate, or to the empire of Brazil, or to the Cape of Good Hope, or to the East Indies, or to China, or round Cape Horn into the Pacific Ocean, or some other ports and places distant from said home port of said
bark, or to engage with said bark in the African slave trade, and
37 to keep the bark away from this respondent and from under
his control, and to retain possession thereof, and embezzle and
keep and appropriate the earnings of said bark to his own use and benefit, and with intent to cheat and defraud this respondent, as hereinafter set forth, then and there fraudulently neglected and refused to obtain and take away any of said freights, and such cargo of wool to Symrna was in a few days thereafter obtained and taken by another American vessel, and said Joseph S. Clark did then and there, about the 10th day of May, 1857, with bark, "Grapeshot," of New York, leave Constantinople, in ballast; that he did not touch at Symrna or any other port, till he arrived at Valetta, in the Island of Malta, about the 21st day of May, 1857, and where he remained with said bark several days, under pretence of seeking freights and of obtaining a bill of health in order to avoid quarantine in the United States, though he well knew that at that season no freights could pro-

bably be obtained for New York or other ports of the United States from said Island of Malta, and though he had no intention of returning to the United States with said bark from said island; that
38 said Clark sailed in said bark from Malta some time about the last of May or first of June, 1857, to the port of Ivica, in the Balearic Isles, where he arrived about the 6th of June, 1857, and on which day he wrote to respondent that, on his passage from Malta thither, he had called at "Trepany" or Cagliari, in the Island of Sardinia, and which this respondent is informed and believes and expressly alleges was entirely untrue; that, at Ivica aforesaid, said Clark purchased part of a cargo of salt for said bark as his private and individual speculation and adventure, and did fraudulently pay therefor with part of the freight monies he had so embezzled and kept at Constantinople, as aforesaid; that said Clark sailed with said bark from Ivica about the middle of June, 1857, with part of a cargo of salt; that he touched at the port of Malaga, in the kingdom of Grenada, Spain, about the last of June, 1857, where said master landed twice, pretending to be in search of freights, and whilst there he was offered a cargo of several hundred tons of lead on freight for the said home port of said bark aforesaid, on fair terms, which, if he had accepted and carried the same, would have yielded to said bark as freight for such voyage from Malaga to New York a large sum
39 of money; and this respondent expressly alleges that, as said Clark well knew, if he had remained at said port a few days he could readily have obtained other cargoes on freight than the lead above mentioned, on fair terms, to the home port of said bark aforesaid and other ports on the Atlantic coast of the United States, if he had been disposed so to do, and that in fact the aggregate value of the exports from Malaga to the Atlantic ports of the United States, (including New Orleans,) in the quarter ending September 30th, 1857, was $1,080,316. employing upwards of twenty-two vessels, and the aggregate value of such exports to the port of New York alone was $655,790, employing upwards of fifteen vessels; but that said Clark, further to carry out and effect his covinous and barratrous design and purpose aforesaid, and with intent to cheat and defraud this respondent aforesaid, then and there fraudulently neglected and refused to obtain, accept, or carry said cargo of lead, and return to the home port of said bark, and also fraudulently neglected to remain at said port of Malaga aforesaid, in order to obtain other cargoes as freight to said home port of said bark, but sailed from said port of Malaga on the same day of June, 1857;
40 that he did not touch at any other Mediterranean port or at any of the Atlantic ports of either Spain or Portugal contiguous thereto, in order to obtain, if possible, freight for said bark to her home port or other Atlantic port of the United States, (and insomuch as the season for fruits was then so far advanced, this respondent alleges he could probably have obtained such freight at such other Spanish or Portugese port if he had touched thereat, and which respondent insists, in the faithful and honest fulfillment of his duty as master, the said Clark ought to have done,) but the said Clark

proceeded directly to the Isle de Sal, one of the the Cape de Verde
Islands, where he arrived about the first day of July, 1857, and
where said master purchased other salt to fill up the cargo of said
bark as his private and individual speculation and adventure, and did
frauduluently pay in part therefor, with the freight monies he had
so, as aforesaid, embezzled and kept at Constantinople, as aforesaid,
and did also fraudulently, and without any warrant and authority
therefore, in satisfaction of other of the purchase-money for said
salt, draw a bill of exchange on this respondent at New York,
41 dated at said Isle de Sal, July 11th, 1857, for $223.10, payable
30 days after sight, to the order of M. A. Martens & Souza,
and did frauduluently pass the same to the payees thereof, who were
induced by his false pretences and representatives as to his authority to
draw, to receive the same, and of which bill said Clark advised this
respondent by a letter, purporting to be dated the same time and at
the same place as the said bill, and in which letter he informed this
respondent that he was obliged to draw the same, not having money
enough to pay for his cargo, and that he was in hopes to get a draft to
respondent from Buenos Ayres or Rio Janeiro before said bill should
fall into respondent's hands, as there was no regular mail from said
island, and that he should leave in fifteen minutes for Buenos Ayres,
"via" Rio Janeiro, with 365 tons of salt, which letter respondent
received on or about the 15th of September, 1857, and which bill said
Clark hath not yet paid or satisfied to the present holders thereof,
and respondent alleges he was not bound or liable to pay said bill,
because it was so fraudulently drawn, negociated, and passed by said
Clark, without any warrant or authority therefor, and because said
Clark had no funds in respondent's hands to pay the same, and
42 said Clark did, immediately after drawing and negociating
and passing said bill, leave said Isle de Sal with said bark and
cargo, intending, as he avowed in said letter, to go to the port of
Buenos Ayres on the Rio La Platte with the same, but to touch, on
the passage, at the port of Rio Janeiro, in the empire of Brazil,
without landing his cargo thereat; that said Clark arrived at the
harbor of Rio Janeiro about the 1st day of August, 1857, and, after
remaining at the anchorage a few days, took said bark and cargo up
to the port of Rio Janeiro, and entered his cargo of salt as of the
sworn value of $6,000, and disposed of the same advantageously, and
as respondent is informed and believes, and therefore expressly
alleges, at a large profit, amounting to several thousand dollars, (after
allowing reasonable freights to said bark therefor;) that said Clark
also received the avails of said salt, and in violation of his duty
as master, did keep and detain said bark at the said port of
Rio unemployed for nearly three months from the time of her
arrival is said harbor, as aforesaid, and during said time was
engaged in divers private and individual speculations, trades,
and adventures, traffickings of various kinds, with the
43 avails of the cargo so purchased, as aforesaid, and with
the freight monies so received, embezzled, and kept by him, as

aforesaid, and utterly neglected and omitted to remit or send to the respondent any monies or funds, or other thing, for the same, or for the hire or earnings of said bark, on said voyage, but did embezzle and keep the whole thereof. And this respondent hath been informed and believes, and expressly alleges, that during all said time said bark was so kept and detained at the port of Rio, aforesaid, by said Clark, freight on fair terms could readily have been obtained by him for said bark, for her said home port, and other Atlantic ports of the United States; but that said Clark, in order further to carry out and effect his covinous and barratrous design and purpose before mentioned, did neglect and refuse to obtain such freight, but sought freight or charter for said bark to Buenos Ayres, to the Cape of Good Hope, to the East Indies, to China, and around Cape Horn into the Pacific Ocean, and also sought to engage with said bark in the African slave trade. And this respondent shows to the court that the aggregate value of the exports in American vessels, from Rio Janeiro to
the Atlantic ports of the United States, (including New
44 Orleans,) in the months of August, September, and October,
1857, was $1,360,770, employing upwards of 72 vessels. And respondent alleges that said Clark, having failed to obtain any freight or charter for said bark, or procure her engagement or employment to the ports or in the trade he sought as aforesaid, he proceeded, on or about the 8th of November, 1857, from Rio Janeiro aforesaid, to the isle of Mayo, one of the Cape de Verd islands, and purchased thereat another cargo of salt, as his private and individual speculation and adventure, (but on what terms, and whether he paid in whole or in part therefor. this respondent hath no knowledge;) and thereupon returned with said cargo of salt to said port of Rio, where he arrived about the 2d of January, 1858, and entered said cargo as of the sworn value of $3,800; and forthwith discharged said cargo, and disposed of the same advantageously, as respondent hath been informed and believes, and therefore alleges, at a large profit, amounting to several thousand dollars, (after deducting reasonable freights to said bark therefor;) that said Clark also received the avails of said last cargo of salt, and in violation of his duty as master, did keep and detain said bark, at the said port of Rio, unem-
ployed nearly three and one half months from the time of his
45 last arrival at Rio, aforesaid, and during said time was en-
gaged in diverse private and individual speculations, adventures, trades, and traffickings of various kinds in salt, old yellow metal or copper taken from ships repaired at Rio aforesaid, and other articles, with the avails of both cargoes of salt, and with the freight moneys and the hire or earnings of said bark so received, embezzled, and kept by him as aforesaid, and further utterly neglected to remit or send to this respondent any monies or funds, or anything for the same, or for the additional hire and earnings of said bark, on said last voyage, but did embezzle and keep the whole thereof, as aforesaid, and hath not, since said bark left New York, in February, 1857, to the day this respondent hath sworn to this answer, remitted, sent, or paid to this respondent anything whatever, on any account what-

ever. And this respondent hath been informed and believes, and therefore alleges, that during all such time the said bark was so kept and detained at said Rio by said Clark, as last aforesaid is stated, freights on fair terms could readily have been obtained by him for said bark, for her said home port and other Atlantic ports of the
United States; but that said Clark, in order further to carry
46 out and effect his covinous and barratrous design and purpose
before mentioned, did neglect and refuse to obtain any of such freights, but, as after his last voyage to said Rio, sought freight or charter for said bark to Buenos Ayres, to the Cape of Good Hope, to the East Indies, to China, or around Cape Horn into the Pacific ocean, and also sought to engage with said bark in the African slave trade. And this respondent further alleges that about the last day of March or first of April, 1858, the said Clark, master of said bark, having failed to obtain any freight or charter for said bark, or to procure her engagement or employment to the ports or in the trade he sought, as above alleged, concluded to return with said bark to the United States; but further to carry out and effect his covinous and barratrous design and purpose before mentioned, and with intent to cheat and defraud the respondent as aforesaid, instead of returning with said bark to her home port, New York, aforesaid, and where this respondent, her owner, resided, although he could readily have obtained freights on fair terms thereto, resolved to take said bark into New Orleans, in the State of Louisiana, and which port of New
Orleans is distant from the residence of this respondent, the
47 home port of said bark, aforesaid; and further contriving, as
aforesaid, said Clark concluded and resolved, as aforesaid, that he would cause, as in fact he did then and there cause, most of the copper or metal on said bark to be stripped from her, under the false and fraudulent pretence that the same was worn out and defective, and that said bark needed to be newly coppered, and that he would cause, as he did in fact then and there cause, said bark, after she was so as aforesid stripped of said metal or copper, to be caulked and scraped, and a few other slight repairs to be made to said bark, under the false and fraudulent pretence that she was wormed and decayed and damaged, and leaked, and needed the same; and that he would cause, as in fact he did then and there cause, to be put on said bark, in place of the metal taken off of her, certain old and second-handed and indifferent metal, which had been before taken off of and from a vessel or vessels before repaired at Rio aforesaid, and which he had sometime before purchased at Rio at a low price, as a private and individual speculation and adventure; and that he would
falsely and fraudulently pretend and represent, as he hath in
48 fact, falsely and fraudulently pretended and represented to
this respondent, that the said metal was new and good metal or copper, and that said bark had been newly coppered; and that he would falsely and fraudulently charge against said bark, and against this respondent, a large sum for said pretended repairs and coppering, and thereby impose upon, cheat, and defraud this respondent; and in order to be better enabled to do so, he would take her, as he

did in fact take her, to said port of New Orleans, instead of taking her to her home port, the residence of this respondent, (insomuch as New Orleans is distant therefrom; and as at the season when said bark would arrive at New Orleans residents of the northern States are averse to visiting said port, in consequence of supposed danger from sickness;) and said Clark, further contriving as aforesaid, then and there further concluded and resolved as aforesaid, that he would, as he did in fact, then and there make false and fraudulent charges against said bark, and against this respondent, of large sums for provisions and other necessaries, pretended to be supplied to said bark for her said voyage. And subsequently, at Rio aforesaid, said
Clark further contriving as aforesaid, concluded and resolved as
49 aforesaid, that he would execute and give a bottomry bond on
said bark and on her freight for said cargo to New Orleans, for such false and fraudulent large sums of money so charged as aforesaid, and accordingly did fraudently combine and confederate and make an agreement and arrangement with libellants therefor, being the bond sued on by libellants; by means of which said bottomry bond, and the suit to be instituted thereon at New Orleans, said Clark and said libellants designed and hoped to be able to constrain the respondent to pay and discharge said false and fraudulent charges for said large sums, and that thereby said Clark and libellants would realize the same; and this respondent is informed and believes, and therefore alleges, that from the time said bark left New York as aforesaid, until the time said alleged repairs were commenced at Rio as aforesaid, said bark had not met with any accident, or sustained or suffered any damage or injury, except that on her first voyage from the Isle de Sal to Rio, just outside of the Sugar Loaf at Rio, she came in collision with another vessel, by which her quarter-board and one of her boats received slight in-
jury, but that the damage sustained was immediately repaired,
50 and that the entire expenses thereof did not exceed $10; and
and that said bark had been painted by her crew whilst at Constantinople, whilst at Valetta, in Malta, and whilst at Rio, before she left that port for the Isle of Mayo, in November aforesaid. and again after her return, in January, 1858, from said Isle to Rio; and that the stripping off of and from said bark of her metal or copper, as aforesaid, was wholly unnecessary; that said metal or copper was but little worn, and was not defective in any respect, so as to require or justify the same being done; and that in fact said metal or copper was as good as that put on in its place; and that the utmost that could possibly have been advisable to be done to said bark, in respect of said metal, was to have put on a few pieces of new metal where the old had been chafed or torn, and the expense whereof ought not to have exceeded $50 00-100; and if it had been necessary to heave down said bark, the expenses thereof ought not to have exceeded the sum of $250 00-100; and that said bark did not need caulking, or that graving pieces should be inserted in her bottom, and was not wormed or decayed; and that in fact any repairs whatever, in Rio, in March or April, 1858, were wholly unneces-

51 sary to enable said bark to proceed safely with a cargo to her home port, as aforesaid, or to New Orleans or elsewhere, on the Atlantic side of the United States; and the respondent is informed and believes, and therefore alleges, that the cost and expenses of stripping said metal off and from said bark, and all the other cost and expense of said alleged repairs, (except the cost of the old second-handed and indifferent metal put on her,) if the same had been necessary, and had been made and done in good faith, ought not honestly and fairly to have exceeded, at Rio aforesaid, at same time, the sum of $650 00-100; and that said old and second-handed and indifferent metal, owned by said Clark and put on her, including the cost of the nails used, if the same had been necessary, and had been put on in good faith, ought not fairly and honestly to have exceeded at Rio aforesaid, at the same time, the sum of $1,350 00-100; and the cost and expense of all the provisions, stores, and other necessaries for the voyage to New Orleans of said bark, ought not honestly and fairly to have exceeded the sum of $200 00-100; and that there should be deducted therefrom the value of the old metal taken from said bark, which was worth quite as much as that put in its place; and that the entire cost and expenses of said alleged repairs at Rio afore-
52 said, as to labor and materials, and also of provisions, if the same had been necessary, as libellants allege, (but which respondent denies, as aforesaid,) and if the same had been done in good faith, and fairly and honestly, ought not to have exceeded in the aggregate, the sum of $2,450 00-100, and in fact, ought not to have amounted to that sum; and he believes, and therefore alleges, that said amount of $9,767 45-100, charged for said alleged repairs and provisions, was and is grossly unreasonable and exhorbitant, and false and fraudulent, as aforesaid, and that the same was contrived and made by said Clark and said libellants, and falsely and fraudulently inserted in the same bottomry bond, as an amount advanced and lent by said libellants, with intent to cheat and defraud this respondent. And respondent further alleges, that said covinous and barratrous designs and purposes of said Clark, the master, and his fraudulent misconduct, and other improper actings and doings of his at Rio aforesaid, before mentioned, were generally known, and in fact were notorious during the times that said bark was so as aforesaid kept and detained by him at said port, nearly six and a
53 half months, especially in March and February, 1858; and that if libellants had been ignorant thereof, and disposed to act fairly and honestly, and in good faith towards this respondent, they could, by proper and reasonable inquiry, have ascertained the same, and that there was no necessity for said repairs; but this respondent believes, and therefore alleges, that they were fully cognizant thereof, and falsely and fraudulently combined and confederated with said Clark and others as aforesaid, to cheat and defraud this respondent in the premises; and respondent shows to the court that the amount charged by said libellants and said Clark, for said pretended repairs, and the marine interest of 19½ per cent. for said alleged advance thereof, amounting in the aggregate to the sum of $11,672 10-100,

bore such proportion to the market value of said bark, whether at Rio aforesaid, after such pretended repairs had been made, or at the ports of New York or New Orleans, that even if such repairs had been necessary to such an amount, to enable said vessel to proceed on her voyage to New Orleans, or to her home port, said master had not, by the usage and custom observed in such cases by the master of vessels, and other persons engaged in the business, or pur-
54 suing the occupation of shipping, navigation, and commerce,
in respect to vessels in foreign ports or places, or by law, any authority or right or power to make repairs to such amount at Rio, without previously informing his owner at New York of the facts and circumstances, and procuring his authority therefor; but if such authority was refused, and if said bark was utterly unfit and unsafe to proceed on a voyage to her home port, without great danger, unless repairs to such amount were made, he had a right to and ought to have sold said bark on the best terms he could procure at Rio, or he should have abandoned her to the underwriters and insurers thereof, or left her at Rio aforesaid; and respondent alleges that said libellants were fully cognizant of the premises, as is manifest by their including the freight in said bottomry bond, on account of the supposed insufficiency of the bark alone, for such amount and marine interest, and that they should have been admonished thereby not to have made such advance or loan, if such were in fact made. And respondent shews that such marine interest of 19½ per cent. is unreasonable and exhorbitant for a voyage from Rio to New Orleans, which ought to have been accomplished by said bark in 40
55 days at most; but even if, as in this case, (though this respon-
dent cannot certainly state the causes therefor,) it extended to 51 days, the said interest is also unreasonable and exhorbitant. And this respondent further shows, that he filed with his said claim sundry exhibits, marked from A to Y, both inclusive, omitting P, which he prays may be held and considered as exhibits filed with this answer, marked as aforesaid, and as a part thereof, and the original whereof he prays he may hereafter be allowed to verify and prove in this cause; and he shows that (as set forth in Exhibit "B," filed as aforesaid) said bark was to be kept insured on joint account; that said Clark, in violation of said stipulation, totally neglected to have said bark insured, and until the receipt of his letter, dated at Rio, the 7th day of April, 1858, marked Exhibit "T," the respondent, in consequence of the non-receipt from said Clark, in due time, of any certain and definite information as to the destination or voyages of said bark, and to be made by her, could not insure the same definitely; that after the receipt of said letter, Exhibit "T," this respondent insured said bark for her said voyage from Rio to New Orleans, but had no opportunity to advise said Clark thereof, and
56 should not have done so, if such opportunity had occurred,
insomuch as, from the tenor of most of his said letters, and after his misconduct aforesaid, the respondent was apprehensive that if the said Clark had knowledge of such insurance, he would cast away said bark, or otherwise destroy her; and he alleges further,

that after the arrival of said bark at New Orleans, said Clark again wrote to him, to know if said bark was insured, (any lawful and respondent could not conjecture,) and therefore and in part for the same honest motive for which inquiry, as said bark had arrived safely, this cause as aforesaid, he did not answer said enquiry; and subsequently, about the 13th of July, 1858, at New York, when said Clark made verbal enquiry to the same effect, this respondent avoided answering the same; and respondent believes, and therefore alleges, that said libellants did not advance and lend to said Clark, the master of said bark, said sum of $9,767 45 for said alleged repairs and provisions, but on the contrary, a large portion of said sum, if the same was so lent and advanced to said Clark, (which respondent does not believe or admit, but denies,) was on account of the private and individual transactions and dealings between them, 57 said libellants and said Clark, and the private and individual transactions and dealings of others with said Clark, some of them relating to speculations in old metal taken from ships repaired there, and not having any proper connection with him as master of said bark, or with said bark or freight, or said alleged repairs or provisions, and for which said bark or freight could not legally and honestly be made bound and liable by any bottomry executed by said Clark, all of which libellants were then and there fully cognizant, when by fraudulant collusion with Clark as aforesaid, they caused said amount to be included in said bottomry bond on said bark and freight; and this respondent insists that by reason of all said premises, fourthly above shown and alleged, said bottomry bond on said bark and freight was and is fraudulent and wholly null and void, and libellants cannot rightfully claim or enforce or recover any part or portion thereof against said bark or freight or this respondent.

Fifth. This respondent expressly denies it to be true that at any time while said bark was lying in the port or harbor of Rio, during the months of January, February, March, or April, 58 1858, as before mentioned, there was any necessity whatever for any repairs to said bark being made at the port of Rio by said master to render her fit and capable, or to enable her to proceed in safety on a voyage with a cargo to her home port, New York, or to said port of New Orleans, or to any other port of the United States, on the eastern side of the continent; and he denies it to be true, as is falsely alleged in said libel, that said bark could not possibly have proceeded with safety upon her voyage to New Orleans without such repairs; and he alleges that said bark was stout, staunch, tight, and strong, and in good order and condition, and repair, entirely sea worthy, and able and fit to proceed on such voyage to New Orleans, or any of said ports, in safety to herself and cargo, and that no such necessity whatever existed for repairs, as alleged in said libel, to render her fit and capable of proceeding on her then intended voyage to New Orleans, or to enable her to proceed thereon with safety, as is falsely alleged in said libel; and that, all and singular, the allegations made in said libel in that regard were and are utterly untrue; and he further alleges that said libellants were fully cognizant thereof

59 at the time of said pretended advances, and the time of the taking
by them from said master said alleged bottomry bond in their said libel set forth. And respondent further says that, not only were said repairs wholly unnecessary to enable said bark to proceed with safety on her said voyage to New Orleans, but that the charges for making said repairs were and are unreasonable, exorbitant, and fraudulent; and he further says the charges for provisions and supplies furnished said bark were also unreasonable and exorbitant and fraudulent, as well with respect to the prices as to the quality and character of said alleged provisions and supplies for said bark, and that said alleged provisions and supplies were not to the extent and amount charged, necessary to enable said bark to proceed on her said voyage; and he also says all said alleged repairs were made, and said alleged provisions and supplies furnished, and said charges made, and the bills therefor rendered, before any advance or loan was made by libellants to discharge the same; and that libellants had full notice and knowledge of all said premises at the time of their making said alleged advance or loan, and the taking by them of said
bottomry bond therefor; wherefore he insists said bottomry
60 bond was and is totally void.

Sixth. That by the usage and custom observed in such cases by masters of vessels and other persons engaged in the business or pursuing the occupation of shipping, navigation, and commerce in respect of vessels in foreign ports or places, the said Joseph S. Clark, master of said bark, in order to warrant or justify him in making extensive or costly repairs to said bark in said foreign port of Rio, was bound, previous to undertaking the same, to cause to be instituted an examination, inspection, inquisition, or survey, either by the appropriate constituted authorities at said port, or by some competent and impartial persons acquainted with such subjects, and said authorities or persons to make report of the state and condition of said bark, and shewing that they had ascertained that an actual necessity did exist for the making of said repairs at said port of Rio by the said master, to render her fit and capable of proceeding, and to enable said bark to proceed safely with a cargo to the port of New York, her home port, or to New Orleans, or to such other ports in
the United States to which she might be bound, and setting
61 forth wherein such repairs were so necessary, and the extent
and estimated cost thereof; and said respondent alleges that he hath not been informed, either by said libellants or by said Clark, the said master of said bark, or by any person, that there was any examination, inspection, inquisition, or survey, as aforesaid, by said master caused to be instituted, or of any such ascertainment, estimate, or report having been made as to the state and condition of said bark at Rio aforesaid, or as to the necessity as aforesaid of any repairs being made at Rio to said bark by said master, as aforesaid. And on the contrary he hath been informed by others than libellants or the said master, and believes, and therefore alleges, that no such examination, inspection, inquisition, or survey was caused to be instituted by said master; nor was any such ascertainment, estimate,

or report, in fact, ever made in relation to the condition of said bark, or the necessity for said pretended repairs alleged in said libel, or otherwise, respecting such pretended repairs. And the said respondent believes and further alleges, that said libellants were fully cognizant of said premises at the time of said pretended
advances and loan by them to said master of said bark alleged
62 in said libel, and at the time of the taking of them by them from
said master of said alleged bottomry bond in their said libel
set forth; therefore, he insists that said libellants are precluded from maintaining their said suit on said bottomry bond aforesaid.

Seventh. This respondent shews that by the usage and custom before mentioned, in such cases by masters of vessels and other persons engaged in the business or pursuing the occupation of shipping, navigation, and commerce, in respect of vessels in foreign ports or places, if anything had happened to said bark on any of her said voyages, from the time of her leaving New York, in February, 1857, up to the time of her arrival, in January, 1868, at said port of Rio, or whilst said bark was in the said port of Rio, as aforesaid, or if said bark had become wormed or decayed, so that extensive or costly repairs to said bark had pecome necessary at said port of Rio by said master, to render her fit and capable, and to enable her to return safely with a cargo to her home port, New York, or to go to New Orleans, or any other port, the said master was bound to note, extend, and make his protest thereof in due form, to the end
that the underwriters and insurers of said bark might be made
63 responsible and liable for the losses and damages incurred or
suffered in consequence thereof, and in order to warrant and
justify any such repairs being made in the said foreign port of Rio by said master; and said respondent alleges that neither said libellants nor said Clark, the said master, nor any other person or persons have or hath informed him of any such protest having been so noted, extended, or made by said master at Rio or elsewhere, at any time since said bark left New York, as aforesaid; but, on the contrary, he hath been informed by others than said libellants and said master, and he believes, and therefore alleges expressly, that nothing had happened during said times above mentioned to said bark, up to the time of her sailing therefrom, on the 17th day of April, 1858, aforesaid, for the port of New Orleans, requiring as aforesaid any such protest by the said master to be noted, extended, or made; and he believes, and therefore alleges, that said bark had not become wormed or decayed; and respondent believes, and therefore alleges, that in fact no such protest by said master was noted, extended, or made at the said port
of Rio or elsewhere, and that said libellants were fully cogni-
64 zant of said premises at the time of said pretended advances
or loan to said Clark, master of said bark, by them, and
the taking by them from him of said alleged bottomry bond, in their said libel set forth; wherefore he insists said libellants cannot recover on said bottomry bond, and that the same is null and void.

Eighth. The respondent expressly denies it to be true, as is falsely alleged in said libel by said libellants, that said Clark, the master of

said bark, at the time of said alleged repairs being commenced or done, and provisions supplied, and of said advance or loan being made by libellants, if the same had been so commenced or done and supplied and made, as stated in said libel, which respondent denies as aforesaid, had no funds or credit at Rio aforesaid wherewith to defray and pay the cost and expenses of any necessary repairs to and provisions for said bark; and the respondent alleges that, all and singular, the allegations in said libel in that regard were and are utterly untrue; and respondent alleges that insomuch as said Clark
had so received and embezzled and kept, as in his answer
65 is before set forth, all the said freight, monies, and hire,
and earnings of said bark, from the time she left her home port, New York, aforesaid, up to the time of her sailing from Rio aforesaid for New Orleans, on the 17th day of April, 1858, as aforesaid; and insomuch as said Clark had also so received, embezzled, and kept all the avails and profits of said two cargoes of salt so carried in said bark into Rio, and entered by him at said port as aforesaid, and as to which first cargo the sum of $230 10 of the purchase money therefore has not been paid by him; and insomuch as said Clark had been engaged during the times that said bark lay at Rio, nearly six and a half months as aforesaid, in divers private and individual speculations and adventures, trades and traffickings, besides said cargoes of salt, as hereinbefore set forth and alleged; and insomuch as the just, legitimate, and proper expenses of said bark at Constantinople, at Valetta in Malta, at Ivica, at Malaga, at the Cape de Verd Islands, on both of her voyages thereto, or at said port of Rio, whilst at the same as aforesaid, up to the time of said alleged repairs were commenced, had been inconsiderable; and insomuch as the respondent, previous to said bark leaving New
66 York, advanced for the voyages of the crew upwards of $223,
and also upwards of $830 for supplies and other expenses of said voyage to Constantinople; and as the payment, from time to time, made by said Clark to the crew of said bark, from the time he left New York, as aforesaid, were, in most instances, only of and for a part or portion of their wages, and the agents of this respondent in New Orleans, Messrs. J. O. Woodruff & Co., having after the arrival of said bark in New Orleans, aforesaid, in June, 1858, advanced to the crew then on board said bark, by instructions from this respondent, the sum of $804 60 for the aggregate of the balances of the wages then due to those comprising said crew; and as also some of the men composing previous crews of said bark after she left New York, aforesaid, on her aforesaid, previous voyage to that from Rio to New Orleans aforesaid, having left said bark without being discharged, or having had paid to them balances of wages due to them, and others thereof having been lost at sea or died without having balances of wages due paid to them, and therefore the aggregate of said Clark's payments on account of the wages of the crews of
said bark during all said time, including articles furnished and
67 cash paid the persons composing said crews during all said
time, and charged by said Clark against said bark in the bill

against her, paid by third persons, did not, probably, exceed $700 00. This respondent believes and alleges that, when said alleged repairs were commenced and done, and when said alleged provisions and stores were supplied to said bark, and said alleged advances and loan made, according to the allegations in said libel, he, the said Clark, master of said bark, had, at Rio aforesaid, funds, as aforesaid, properly applicable by him to the defraying and payment of all the proper and necessary cost or expenses of said repairs and provisions, wherewith to defray and pay, and amply sufficient to defray and pay, the same, even to the amount alleged in said libel, and for which payment, if made out of said funds, said master would have had by law a lien on said bark and freights, and all her provisions, freight, and earnings since she left New York, and which payment respondent insists, if such amount was just and proper, said master was bound to make out of and from said funds; and also that respondent further believes, and therefore alleges, that said Clark, the master of said bark,
68 had then and there, at the times aforesaid, and at Rio aforesaid, credit to procure other funds wherewith to defray and pay, and sufficient to defray and pay, all such cost and expenses aforesaid, and to the amount alleged in said libel, without there being any necessity of resorting to any advance or loan on bottomry of said bark and freight by said libellants, or others; and this respondent alleges said libellants were fully cognizant at all said times of said premises, and that by reason thereof they were and are precluded by law from enforcing or recovering against said bark, or freight, or this respondent, the said alleged advances and loan and said bottomry bond, stipulating for marine interest at 19½ per cent., as aforesaid.

Ninth. The respondent expressly denies it to be true, as is falsely alleged in said libel by said libellants, that the respondent had no funds or credit at Rio aforesaid, at the time of said alleged repairs being commenced and done, and provisions being supplied, and of said alleged advances or loan made by them to the said Clark, if the same had been so done, supplied, and made as alleged, (which he denies,) wherewith to defray and pay therefor; and he alleges
69 that all and singular the allegations in said libel in that regard made, were and are utterly untrue; and respondent alleges that, besides the amount due him by said Clark, and then and there in the hands of said Clark, as hereinbefore alleged and shown, exceeding in the aggregate the just and reasonable cost and expenses of all such repairs and provisions, he, the said respondent, then and there, at the times aforesaid, at Rio aforesaid, had credit to procure and obtain such funds wherewith to pay all such costs, charges, and expenses, and even to the amount alleged in said libel, without said master having any necessity to resort to any advances or loan with unreasonable and exhorbitant marine interest therefor, and bottomry of said bark and freight to said libellants, or others. And this respondent alleges that steamships and other vessels, of which he was the sole owner, or in which he was owner with others, have heretofore, at different times on their passage from New York to the Pacific, stopped at said port of Rio, where they required large advances to be

made; that said advances were, in every instance, obtained without
difficulty from the house of Maxwell, Wright & Co., or other American
houses of good standing, and possessing means at Rio afore-
70 said, and on the credit of himself and other owners in other
cases, without any of said houses demanding any marine
interest for said advances, or any bottomry of such vessel to secure repayment thereof; and that he believes, and therefore alleges, that the aggregate of such advances so made exceeds five times the amount of said alleged advances stated in said libel.

And this respondent alleges that in the year 1856 said bark Grapeshot, of New York, with the same Joseph S. Clark as master thereof, went into said port of Rio, on her return passage from Buenos Ayres to her home port, New York; and whilst at said port of Rio, said master incurred expenses to an amount exceeding $2,300, on account of and for said bark, and alleged by said Clark to be chiefly for repairs done to her at said port by said master; and that said Clark readily obtained said amount to be advanced to him by merchants at Rio, and without resorting to any bottomry of said bark or the payment of any marine interest therefor; and respondent believes, and therefore alleges, that said house of Maxwell, Wright
& Co., at Rio, which had been his correspondents and agents
71 and had made advances for him in the instances before men-
tioned, and to which this respondent is known, or any other
American commercial house at Rio in good standing and having the means so to do, would have advanced on the credit of this respondent, as owner of said bark, upon proper application having been made to them by said master, Clark, any sum proper and necessary to be so advanced, and which said Clark could have satisfied them was fairly and honestly necessary for repairs to said bark, or provisions for her, even to an amount greatly exceeding that of the alleged advances by libellants stated in their said bottomry bond and libel as aforesaid, and not have required bottomry of said bark or said freights, or marine interest therefor; and respondent believes and therefore alleges, that said Clark, master, as aforesaid, did not, bona fide, make any application for such advances on the credit of the respondent to said house of Maxwell, Wright & Co., in Rio, or any American commercial house of good standing and means as aforesaid, but colluding, combining, and confederating with libellant, as hereinbefore mentioned, fraudulently neglected and omited so to do. And
respondent alleges that said libellants were fully cognizant at
72 such times of all said premises, and, by reason thereof, they are
precluded by law from enforcing and recovering against said
bark or freight, or against this respondent said alleged advances, and said marine interest of 19½ per cent. thereon, stated in said bottomry bond and such libel as aforesaid.

Tenth. The respondent shews that by the usage and custom observed by masters of vessels and other persons engaged in the business, or pursuing the occupation of shipping, navigation, or commerce, in respect of vessels in foreign ports or places, it became the duty of said Clark, the said master of said bark, if neither said mas-

ter, or this respondent, had any funds at Rio aforesaid, wherewith
to defray and pay any necessary expenses for necessary repairs and
provisions for said bark; and so soon as he should have ascertained,
by proper and diligent inquiry and application as aforesaid, that
said funds could not be obtained at Rio on the credit of said master,
or the credit of this respondent, and that he would be constrained to
procure and advance or loan of funds necessary to defray
73 and pay such expenses by bottomry of said bark, or of said
bark and freights, with marine interest on said advance, to
give public notice by advertisement of the amount of the advance
required, and a description of the vessel, and a statement of her
contemplated voyage, and of her cargo, the cause or reason for re-
quiring the loan, and other particulars, and notice to be published
for a reasonable time, to the end that all persons at Rio aforesaid,
so disposed, could have offered such advance and loan, and the term
on which they would make the same, whereby the absent owner would
be, in some degree, protected against collusion between said master
and any party, and such advance or loan thereby obtained on the
most favorable terms. And respondent alleges that he hath been
informed, and believes, that said Clark, master, after said alleged
repairs were made, and said alleged provisions and supplies furnished
said bark, and said bark laden and nearly ready to proceed to sea on
her said voyage, in collusion with said libellants and others, and to
consummate their designs herein set forth, fraudulently pretending to
comply with the aforesaid usage and custom, did, on the 13th day
of April, 1858, cause to be published in a newspaper at Rio
74 aforesaid, a certain notice or advertisement, not signed by
any person, (which notice was also published in said paper on
the 14th of April,) and which notice stated, in Portuguese and Eng-
lish, that there was wanted on bottomry bond upon hull and freight
of American bark "Grapeshot," hence to New Orleans, 16,000
for expenses in this port, and that sealed proposals will be received at
the office of the United States consul on noon of the 14th instant;
and respondent expressly alleges that the foregoing was and is the
only notice or advertisement ever given or made by said Clark, in
relation to the obtaining of money by him on bottomry or otherwise,
wherewith to pay said alleged expenses; and he further shews that
said notice was and is altogether insufficient, insomuch as the same
was not published a reasonable time to allow merchants and capital-
ists at Rio, generally disposed to make such loan, full opportunity to
ascertain the facts, and whether the alleged expenses were necessary
and bona fide, and bid advisedly for such loan, (one day only being
stipulated thereby wherein bids could be presented, and which time
was too short to afford fair and just competition,) and likewise
75 the cause and reason for seeking such loan being stated gen-
erally, as aforesaid, to be for expenses in this port, the same
was not sufficiently stated to effect the obtaining of such loan on fair
terms; and that said notice was and is manifestly a fraudulent
attempt to evade the said usage and custom aforesaid, and to avoid a
bona fide compliance therewith, and at the same time to afford some

color for the pretence that the same had been observed. And respondent alleges that the said libellants were, at all said times, fully cognizant of said premises, and fraudulently colluded, combined, and confederated, and contrived with said Clark to cheat and defraud this respondent, and to obtain the making of said advance or loan for themselves, and with the unreasonable and exhorbitant interest of 19½ per centum, as aforesaid; and that the said notice was a part and parcel of said contrivance, (said libellants being the sole and only bidders for said loan under said notice,) by reason whereof they were and are precluded from enforcing and recovering against said bark and freight, or against this respondent, said alleged advances, and upon said bottomry bond stipulating
76 for said marine interest, as aforesaid.

Eleventh. This respondent alleges, that by reason of said false and fraudulent collusion, combination, and confederacy, by and between said libellants and said Clark, master of said bark, and their false and fraudulent and illegal actings and doings, hereinbefore mentioned, and which resulted in the taking of said alleged bottomry bond upon said bark and freight, and in this said suit, instituted thereon in this court, the respondent has wrongfully suffered and sustained great damage, injury, and loss, and to an amount, as he believes, and therefore expressly alleges, of at least $12,000, and for which he is advised that said libellants and said Clark are legally responsible and liable; and that so soon as he can ascertain the christian names of said Wallerstein and Masset, and the christian and surnames of the other person or persons comprising said firm of Wallerstein, Masset & Co., the said libellants, he will seek to recover his damages, aforesaid, in this said suit; and that it is his intention to file in this honorable court, and in this cause, a cross-libel for
77 the recovery of said damages against said libellants, and against said Joseph S. Clark, (as to whom he will apply to said court for leave to make him a party defendant with said libellants in and to such cross-libel, which he insists he hath legal right to do. as aforesaid.) and that said libellants should therefore be compelled, forthwith, to disclose said christian and surnames, aforesaid.

Wherefore, by reason of the said premises in this answer shewn and alleged, respondent prays that this honorable court may be pleased to pronounce against this libel aforesaid, and to dismiss the same, and to condemn said libellants in costs, and for and in the damages so as aforesaid suffered and sustained by respondent, and otherwise law and justice be administered in the premises.

(Signed) GEORGE LAW.
(Signed) SINGLETON & CLARK,
Proctors and Counsel for Respondent.

SOUTHERN DISTRICT OF NEW YORK:

On the 13th day of October, 1858, personally came before me, George Law, and made oath that he had read, or heard read,
78 the above answer by him subscribed; and that he knew the contents thereof; and that the same is true of his own know-

ledge, except as to matters of information or belief, and as to those matters he believed the same to be true.

(Signed) GEORGE LAW.
(Signed) R. E. IHLUEK,
U. S. Com'r.

United States of America, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Shewell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting. I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

79 In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, this thirteenth day of October, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of these United States the eighty-third.

(Signed) KENNETH G. WHITE, *Clerk.*

United States District Court, eastern district of Louisiana.

Document "A."—Annexed to answer.

Wallerstein, Masset & Co.
vs. } 7,370.
Bark "Grapeshot."

Charter party of "Grapeshot" to Buenos Ayres, between George Law and Butler, Newhall & Co. June 6, 1856.

This charter-party, made and concluded in the city of New York, this sixth day of June, in the year one thousand eight hun-
80 dred and fifty-six, between George Law, owner of the bark "Grapeshot," of New York, of the burthen of three hundred and forty-seven tons, or thereabouts, now lying in the harbor of New York, of the first part, and Butler, Newhall & Co., merchants, of Philadelphia, of the second part, witnesseth, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said parties of the second part, does covenant and agree on the freighting and chartering of the said vessel unto the said parties of the second part, for a voyage from port of Philadelphia to Buenos Ayres and back direct to New York, it being understood and agreed that the vessel proceeds in ballast to Philadelphia with all possible dispatch, on the terms following, that is to say:

First. The said party of the first does engage that the said vessel, in and during the said voyage, shall be kept tight, staunch, well-fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage.

Second. The said party of the first part doth further engage that the whole of said vessel (with the exception of the cabin, the 81 deck, and the necessary room for the accommodation of the crew, and the storage of the sails, cable, and provisions) shall be at the sole use and disposal of the said parties of the second part during the voyage aforesaid; and that no goods or merchandise whatever shall be laden on board, otherwise than from the said parties of the second part, or their agent, without their consent, on pain of forfeiture of the amount of freight agreed upon for the same.

Third. The said party of the first part does further engage to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said parties of the second part, or their agents, may think proper to ship, as hereinafter specified.

And the said party of the second part, for and in consideration of the covenants and agreements to be kept and performed by the said party of the first part, do covenant and agree with the said party of the first part, to charter and hire the said vessel as aforesaid, on the terms following, that is to say:

First. The said parties of the second part do engage to pro- 82 vide and furnish the said vessel with a full cargo of lawful merchandise (or sufficient for ballast) during the voyage aforesaid, say a full cargo of flour or other lawful merchandise outward and the same homeward, the party of the first part guaranteeing the vessel to carry the bulk of twenty-six hundred barrels of flour (2,600 bls.) for her outward cargo. It is understood the usual number of half barrels are to be furnished for stowage.

Second. That said parties of the second part do further engage to pay to the said party of the first part, or his agent, for the charter or freight of the said vessel during the voyage aforesaid, in manner following, that is to say:

For the voyage from Philadelphia and back directly to New York, fifty-seven hundred and fifty dollars, (say $5,750,) or, in case Rio de Janeiro be used, sixty-two hundred and fifty, (say $6,250,) and pay customary port charges in Buenos Ayres, and in Rio de Janeiro also, should it be used.

It is further agreed between the parties to this instrument, that the said parties of the second part shall be allowed for the loading and discharging of the vessel at the respective ports aforesaid, that 83 is to say, quick despatch in loading in Philadelphia, and forty (40) running lay days in Buenos Ayres alone, or in Buenos Ayres and Rio de Janeiro; and in case the vessel is longer detained, the said parties of the second part agree to pay to the said party of the first part demurage at the rate of forty United States dollars per day, for each and every day so detained, provided such detention shall happen by default of the said parties of the second part, or their agents.

It is also understood and agreed that the cargo shall be received and delivered alongside of the vessel, within reach of her tackle. It is also further understood and agreed that this charter shall commence when the vessel is ready to receive cargo at her place of loading, and notice thereof is given to the parties of the second part, or to their agents.

It is agreed and understood that one thousand dollars of the charter is to be paid when the vessel is loaded in Philadelphia, and balance upon sight delivery of cargo in New York; and that the charter is free of charge of commission by charterers or agents. It is further
understood that in case the master needs funds to enable him
84 to prosecute the voyage, the charter's agents at Buenos Ayres
are to advance him not to exceed six hundred dollars for that
purpose, free of commission, and that the master is to sign bills lading at any rate of freight without prejudice to this charter-party.

To the true performance of all and every of the foregoing covenants and agreements, the said parties, each to the other, do hereby bind themselves, their heirs, executors, administrators, and assigns, and also the said vessel, her freight, tackle, and appurtenances, (and the merchandise to be laden on board,) each to the other, in the penal sum of six thousand dollars.

In witness wherefore, the said parties have hereunto interchangeably set their hands and seals, this day and year above written.

(Signed) BUTLER, NEWHALL & CO.

Sealed and delivered in the presence of—

THOS. P. STOLESBURY,
Witness to signature of Butler, Newhall & Co.

85 *Document "B."—Attached to answer.*

Bill of sale of ½ of "Grapeshot," Custom House, New York, June 25, 1856. Received for record at 12.15 p. m., and recorded in book of B. S. of R. V., No. 16, page 257.

(Signed) G. RUSSELL, *Clerk.*
(Signed) J. WILSON, JR., *Dep. Col.*

June 25, 1856, ¼ past 12.

To whom these presents shall come, greeting:

Know ye that I, George Law, of the city of New York, owner of the ship or vessel called the "Grapeshot," of New York, of the burthen of three hundred and forty-five 2-95 tons, or thereabouts, for and in consideration of the sum of twelve thousand five hundred dollars, lawful money of the United States of America, to me in hand paid before the ensealing and delivery of these presents, and to be paid by Joseph S. Clark, of the city of New York, the receipt whereof I do hereby acknowledge and am therewith fully satisfied, have bargained and sold, and by these presents do bargain and sell, unto the said Joseph S. Clark, his executors, administrators, and as-
signs, the one undivided half part of the said ship or vessel,
86 together with tackle, apparel, the masts, bowsprit, sails, boat,
anchors, cables, and all other necessaries thereunto appertain-

ing and belonging, excepting the chronometer and other articles on board belonging to the present captain; the certificate of enrolment, of which said ship or vessel is as follows, to "wit:"

No. 536. In pursuance of an act of the Congress of the United States, entitled an act concerning the registering or recording of ships or vessels.

George Law, of the city, county, and State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the "Grapeshot," of New York, whereof Richard Hepburn is at present master, and is a citizen of the United States; and that the said ship or vessel was built at Cumberland, State of Maine, in the year 1853, as per register No. 536, issued at this this day, now cancelled property, changed in part, and said register having certified that said ship or vessel has one deck and three masts, and that the
length is one hundred and twenty feet two inches, her breadth
87 twenty-six feet three inches, her depth eleven feet eleven and
½ inches, and that she measures three hundred and forty-five 2-95 tons; that she is a bark, round stern and figured head.

And the said George Law having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said bark has been duly registered at the port of New York.

Given under our hands and seals, at the port of New York, this twenty-fifth day of August, in the year one thousand eight hundred and fifty-four.

(Signed) C. S. FRANKLIN,
D'y Naval Officer.
[s. s.] (Signed) Pr. BRIGGS, *Register.*
(Signed) H. CALHOUN, *D'y Col.*

To have and to hold the said undivided one-half part of said ship or vessel, and appurtenances thereunto belonging, unto Joseph S. Clark, his executors, administrators, and assigns, to his and their sole and only proper use, benefit, and behoof, subject nevertheless to the condition that he or they shall well and truly pay, or cause to be paid, the sum of $9,500, balance of said purchase-money, with inter-
est from this date, in four equal instalments, secured by the
88 four promissory notes of said Joseph S. Clark for $2,375 each,
payable with interest at seven per cent., one in six months, one in twelve months, one in eighteen months, and the other in twenty-four months; and said George Law also assigns and transfers to said Joseph S. Clark one-half part of all the benefits of a certain charter-party of said vessel executed between said George Law and Butler, Newhall & Co., dated June 6, 1858, subject nevertheless to the one-half of $876 27-100, expenses incurred on said charter-party prior to said vessel leaving New York, and also to one-half of all subsequent expenses, he, the said George Law, reserving the right to receive and collect the money payable on said charter-party for the reimbursement of said expenses, the balance to be divided; and

until payment of the aforesaid ballance due for the purchase-money of said vessel, said vessel is to be insured on joint account, but any moneys payable on such insurance are to be paid to said George Law, for the purpose of satisfying any amount remaining unpaid on said notes, whether the same be then due or not, and he is to
89 account for and pay to said Joseph S. Clark, or his legal representatives, the balance of his proportion of such insurance money.

And the said George Law, for himself, his executors, and administrators, has and does by these presents promise, covenant, and agree to and with the said Joseph S. Clark, to warrant and defend the undivided half of said ship or vessel, with her appurtenances, against all and every person and persons whatever.

In witness whereof he has hereunto set his hand and seal this 25th day of June, one thousand eight hundred and fifty-six.

[L S.] (Signed) GEORGE LAW.

Sealed and delivered in presence of—
J. BEN. WOOD.

STATE OF NEW YORK:

Know all men, that on the day of the date hereof personally appeared George Law, to me known, and acknowledged before me the foregoing bill of sale to be his act and deed.

Given under my hand and seal of office this 25th June, 1856.

(Signed) J. BEN. WOOD, *Not. Pub.*

90 *Documents C, D, E, F.—Annexed to answer.—Notes to George Law, dated June 25th,* 1856.

$2,375. NEW YORK, *June 25th,* 1856.

Six months after date, for value received, I promise to pay George Law, or order, twenty-three hundred and seventy-five dollars, with interest at seven per cent.

(Signed) JOSEPH S. CLARK.

$2,375. NEW YORK, *June 25th,* 1856.

Twelve months after date, for value received, I promise to pay George Law, or order, twenty-three hundred and seventy-five dollars, with interest at seven per cent.

(Signed) JOSEPH S. CLARK.

$2,375. NEW YORK, *June 25th,* 1856.

Eighteen months after date, for value received, I promise to pay George Law, or order, twenty-three hundred and seventy-five dollars, with interest at seven per cent.

(Signed) JOSEPH S. CLARK.

91 $2,375. New York, *June 25th*, 1856.

Twenty-four months after date, for value received, I promise to pay George Law, or order, twenty-three hundred and seventy-five dollars, with interest at seven per cent.

(Signed) JOSEPH S. CLARK.

Document "G."—Charter-party of "Grapeshot" to Constantinople. January 7th. 1857.

This charter-party, made and concluded at the city of New York the seventh day of January, in the year one thousand eight hundred and fifty-seven, between Captain Clark, of the bark "Grapeshot," of New York, the burthen of three hundred and forty-seven tons, or thereabouts, register measurement, now lying in the harbor of New York, of the first part, Messrs. Roidi Rodocannacchi & Carali, merchants of this city, of the second part, witnesseth: That the said party of the first part, for and in consideration of the covenants and agree-
ments hereinafter mentioned, to be kept and performed by
92 the said party of the second part, does covenant and agree
on the freighting and chartering of the said vessel unto the said party of the second part, for a voyage from this port of New York to Constantinople, on the terms following, that is to say:

First. The said party of the first does engage that the said vessel, in and during the said voyage, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage.

(Second. Crossed out.)

Third. The said party of the first part does further engage to take and receive on board the said vessel during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part, or their agents, may think proper to ship.

Cargo to be properly stowed at ship's expense.

And the said party of the second part, for and in consideration of
the covenants and agreements to be kept and performed by
93 the said party of the first part, do covenant and agree, with
the said party of the first part, to charter and hire the said vessel, as aforesaid, on the terms following, that is to say:

First. The said party of the second part does engage to provide and furnish to the said vesel not less than fifty thousand gallons of rum, in different size barrels, from about 25 to 40 gallons each; one hundred barrels rosin; three to four hundred bags of coffee; and as much logwood as required by captain, not to exceed however 40 tons, giving charter's privilege of not shipping any.

Second. That said part of the second part does further engage to pay to the said party of the first part, or his agent, for the charter or freight of the said vessel during the voyage aforesaid, in manner following, that is to say: For the rum, four and one-half cts. (4½) U. S. currency per gallon; for the rosin, one and one-half dollar ($1½) U. S. currency per barrel; for the coffee, one-half cent (½) U. S. currency per pound; for the logwood, seven dollars ($7) U. S. currency,

per ton of 2,240 pounds, all with five per cent. primage, captain to have the privilege of taking cargo from other parties to fill up with,
except such goods as the charterers may have on board
94 or is injurious to the cargo. Freight to be paid in United
States currency or its equivalent upon the true delivery of the cargo at Constantinople.

It is further agreed between the parties to this instrument, that the said party of the second part shall be allowed for the loading and discharging of the vessel at the respective ports aforesaid, lay days as follows, that is to say: To load with dispatch at pier No. 13, E. R., not to exceed twenty days from the date of this charter vessel to said five days after charterers' goods are on board, unless detained by ice or stress of weather or some unavoidable accident; the cargo to be delivered at Constantinople alongside or within reach of the vessel's tackles; the vessel not to pay any lighterage or for transportation after having taken berth for discharge at above port; fifteen days allowed for the discharge of the cargo at Constantinople, after captain has given written notice to consignee that he is ready to take a berth; and in case the vessel is longer detained, the said party of the second part agree to pay to the said party of the first part demurrage
at the rate of forty dollars U. S. currency, or its equivalent, per
95 day, day by day, for every so detained, provided said
detention shall happen by default of the said party of the second part or their agent. It is also further understood and agreed, that this charter shall commence from the date of this charter.

To consign to friends of charterers at Constantinople subject to two per cent. commission on freight only; a gratuity of $20 promised captain if he arrives at Constantinople before schooner Stephen Hotchkiss, now loading for that port. To the true performance of all and every of the foregoing covenants and agreements, the said parties, each to the other, do hereby bind themselves, their heirs, executors, administrators, and assigns, (especially the said party of the first part the said vessel, her freight, tackle, and appurtenances, and the said party of the second part the merchandise to be laden on board,) each to the other in the penal sum of amount of freight.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals the day and year above written [written]

(Signed) ROIDI, RODOCANACCHI & CARALI.
JOSEPH S. CLARK.

Sealed and delivered in presence of—
A. B. HOLMBRE.

96 *Document H.—Annexed to answer.*

Letter from George S. Clark, Constantinople, May 9th, 1857, to George Law, New York.

CONSTANTINOPLE, *May 9th*, 1857.

DEAR SIR: I shall leave this port in the morning for Malta and procure a bill of health, and shall be guided by what I can find out

about at Malta for a freight. The best offer I can get for a freighr in this port is, to proceed to Smyrna and load with rags and wool fo New York, at a ½ of a cent per pound, the vessel paying the expenses of compressing, which is about sixty cents. I have figured close at the profits and find that the vessel cannot make more than $1,200 at the outside, if she can do as well, which is doubted by many which is accustomed to carry wool; therefore I am about to take the responsibility of looking farther, and if I fare worse you must not attach any blame to me. Should have left some days before this, only there was a prospect of my getting a freight from the sea of Azove, which
97 has failed with the last arrival of the mail from England. Business in this old world is at a stand-still, with but little prospect for a change for the better before autumn. I shall proceed down the Mediterranean, and if none can be found shall take a cargo of salt for the Brazils or river La Plate. I cannot see any other course to pursue; even that is a lottery; I may find a paying market or may not. I wrote to you while I was in the Dardanelles, but trusted to a boatman to mail the letter, as I could not land myself without a pratique. I will again repeat my last letter, which was only the time of my passage up to the S.W. cape of the Morea, (Greece,) was thirty days; then I took the wind from the N.E. right down the Archipelago for ten days. I banged against under close-reefed sails for four or five days but could not gain any; I therefore bore up and run into Navarino bay, where I lay six days; come to sea after the gale was over, but got fairly into the Archipelago, when I took the second time wa forced to beat the entire way up into the Dardanellas, where I beat eight days more, got discouraged, I took steam through and paid $150 or thirty pounds sterling. I then beat through the sea
98 of Marmora, discharged cargo, took in ballast, and hauled out into the Golden Horn, ready for sea, before the fleet arrived that I come up with at the western entrance of the Dardanellas. But all this is of but little use as there is nothing to do, consequently time is worth nothing to the vessel; had I known it I would have saved the amount. It is gone, and I thought at the time I should save money by doing so. I am about worn out banging and beating against the infernal winds, which blows the entire month of March and April from the eastward, and with such violence that a vessel cannot carry anything more than close-reefed sails nearly the whole time. Now they are over I suppose I will get calms all the way down; this is my first voyage through Dardanelles while master, and I can assure you, sir, it will be my last. With regard to selling any rifles, it is out of the question in this place; but our consel gen'l and secretary of legation, John J. Brown, thinks he may be able to order some for the Circassians, as he has a perfect knowledge of them people and expects to go up in that direction soon and desired me to leave
99 him a couple; have done so, but don't well know if it is according to your wish, but both him and Mr. Spence, our ambassador, gave me some encouragement. Such, sir, is my position. I shall not be able to send you home any money for the present; at least, until I see what I can do in the Mediterranean; if it is possible,

will do so. It is discouraging to me to sail this vessel or any other without making money; the prospect looks gloomy as far as I can see, but shall stick to it and hope for better times. The sch'r Stephen Hotchkiss came up with me while I was in the Dardenelles; all the time I was wind-bound in Navarino with a gale from the east, he was comming up Mediterranean with a gale from the westward. I beat eight days in the Dardenellas when I took steam; laughed at the idea, but obliged to take steam through, and arrived in Constantinoble one week after me. He has met with considerable damage trying to beat the "Grapeshot;" he has lost his entire head, started his stem, and sprung his foremast; repairing under an average. I have not met with a scratch as yet, but had one man washed overboard crossing the Atlantic. I was running under close-reefed topsails, and could not save him.

I remain, sir, your ob't serv't,

(Signed) JOSEPH S. CLARK.

100 *Document I.—Annexed to answer.*

Despatch from J. Brierre, New Orleans, June 9th, 1858, to George Law.

NATIONAL TELEGRAPH OFFICE, 21, WALL ST.,
New Orleans, June 9th, 1858.

TO GEORGE LAW: I hold "Grapeshot" bottomry bill; shall I advance one thousand dollars for crew?

J. BRIERRE.

Document J.—Annexed to answer.

From Joseph S. Clark, Malta, May 25th, 1857, to George Law, New York.

MALTA, *May 25th*, 1857.

DEAR SIR: The mails from Marseilles arrived last night, bringing dates from New York to 2d May, from England 18th, and other places as late as due. It gives me the blues to look over the
101 news from all parts; it looks as dark as a thunder cloud; and I wish the "Grapeshot" was fast to your wharf, and I was in Kansas or any other place where I never could look at a vessel again. The news that I come in this enchanted place to get is so bad that I wish I had not have got it—put me into a fever. If you can sell the "Grapeshot" or give her away, or dispose of her in any way without a loss to yourself, do so by all means, for she is a pickpocket, and not fit for a poor man like me in these infernal times. I shall go to sea this afternoon and proceed as I wrote in my last, if nothing turns up better, and there is no fear of it; will keep you advised of my proceedings, and hope you are making money fast at home, for this vessel will require some when she gets home.

Remain your ob't serv't,

(Signed) JOSEPH S. CLARK.

P. S. If this letter is harsh please excuse it, for I have not wrote half as hard as I feel.

102 *Document K.—Annexed to answer.*

From Joseph S. Clark, Port Avizia, June 6th, 1857, to George Law, New York.

Port Avizia, *June 6th*, 1857.

Dear Sir: The last hope of getting a freight for home, or even any place, has fled, and I am now obliged to purchase a cargo of salt at this place for South America, either Rio or La Platte; the price is very high, but at a much lower price than at Trapung or Cagliaro, (in the Island of Sardinia,) where I called on my passage from Malta; but the salt is of very inferior quality, it being very black. I think it will do for that market, but not for ours; in fact, salt is a scarce article. Just now they are shipping from this island to St. Ubes and other salt districts. I have got all the particulars of the business doing in Malaga, which amounts to nothing; I believe I will take a cargo, and proceed to Rio at once; have already lost too much time. If you have anything to communicate to me you can do so at Rio de
103 Janeiro, and I wish you would do so, for I want some sympathy. Salt will cost me here about three dollars thirty cents per ton alongside; shall take about three hundred tons; shall leave in about ten days.

With many regards for your welfare, I remain, your ob't serv't,

(Signed) JOSEPH S. CLARK.

Document L.—Annexed to answer.

From Joseph S. Clark, Ivica, June 11th, 1857, to Geore Law, New York; postmarked, Liverpool, England, June 22d.

Ivica, *June 11th*, 1857.

Dear Sir: Have bought my salt and taking it on board, and will be off about the 15th; but little prospect of making anything with it, it being so poor a quality; if there is any demand for salt, I may make freight; if not, can do nothing with it. The fact is there is no salt in the country worth carrying, which gives me some hopes; if there is no better they must take it. Salt is a monopoly of the government, and all qualities cost the same price, that is not far from $3 25-100 per ton on board. I shall take about 300 tons, not more. I wrote
104 you a few days since by the American bark Cadet, but now I have a chance to write by mail, as it leaves once a month. I have no money to send you, as I shall most likely go to Buenos Ayres from Rio or Montevido with my cargo, and shall require all the money in that case to disburse the vessel. If you have any one in view that you think can do better than I do, I wish to God you would send him to Rio, for it is impossible for me to make money with the vessel these times. I will freely resign my command at your request; still will try my best for your interest.

Wishing, sir, you and your family health and happiness, I remain, your ob't. serv't,

(Signed) JOSEPH S. CLARK.

To the Honorable George Law, *New York*.

Document M.—Annexed to answer.

From Joseph S. Clark, Port Maria, Isle de Sal, July 11th, 1857, to George Law, N. Y. Mailed at New Bedford, Mass., Sept. 11th.

105 PORT MARIA, ISLAND OF SAL, *July 11th*, 1857.

MR. LAW:

DEAR SIR: I am obliged to draw on you for two hundred dollars and ten cents, ($223 10,) not having money enough to pay for all my cargo. Much I regret to be obliged to do so. I am in hopes to get a draft to you from Buenos Ayres or Rio de Janeiro before it falls into your hands, as there is no regular mail from this island. I leave in 15 minutes for Buenos Ayres, via Rio de Janeiro, with 365 tons salt.

With many wishes for your health, I remain yours respectfully,
(Signed) JOSEPH S. CLARK, *Master*.

Annexed to document M.—Copy of draft.

S'r GEORGE LAW, *Nova Yorka:*

ILHA DE SAL, *de Julho, de* 1857.

Uesta data ternos sacaho contra vell'ue a ordem dos Sur M. A. Martens & Souza, pela quantam de duzentos e viente etrez dollars and des centos, paga vies 30 dias de vista por valba de urna carga de sal
aleas valor per saldo de urna carga de sal para a barca
106 "Grapeshot," que se serva pagar un sen vincimento son com
a mair esterna e considerao.

De V. M'm.,
(Signed) ALT. VENERADOR & CR'SA.
JOSEPH S. CLARK.

LAW, $223.10.

(Engrand) N. Illia de Sal, 11 de Julhes, de 1857. $223.10.

A triente dias de vista pagara V. M'm por esta priemira viabe Setra (nos etendo futo pila segundo entercina) a vidien dos Sen'r M. A. Martens & Souza, a quantia de duzentos vinte etroy dollars e dez centos, valor por sullo de una carga desol rec'd ida dos mes mos sen'r para e barca "Grapeshot," do ma commando como de avisode.

(Signed) JOSEPH S. CLARK.

AV Sen'r GEORGE LAW, *Nova Yorka.*

Pagne se ae Sen'r Ira B. Studley, ona sua ordem valor recirbide.
Illia de Sal, 12 de Dezembro, de 1857.

(Signed) M. A. MARTENS, JR.
(Signed) IRA B. STUDLEY.

Address: Chas. A. Colby, New Bedford, Mass., Feb'y 1st, 1858.

107 George Law to C. H. Colby.

243 5TH AVENUE, NEW YORK, *Feb'y 1st*, 1858.

SIR: On having the bill of exchange and letter, you left to-day for my examination, translated, I find that the bill purports to have been drawn by Joseph S. Clark, captain of the bark "Grapeshot," upon me for $223 10, and to be dated at the Isle of Salt, 11th July, 1857, and to be in favor of M. A. Martens & Souzo, and payable 30 days after sight, and to be for part of cargo of salt for said bark, and to be endorsed by M. A. Martens, sr., and in blank by Ira B. Studley. Captain C. was not authorized to purchase a cargo of salt on my credit, and I cannot accept or pay this bill. I therefore return it and the letter to you enclosed agreeably to your request.

I am, respectfully, your ob't ser't,
(Signed) GEORGE LAW.

C. H. Colby, Esq., *New Bedford, Mass.*

108 C. H. Colby to George Law.

New Bedford, *4th Feb'y*, 1858.

Sir: Your favor of 1st was duly received with draft enclosed. I was surprised at your refusal to accept the draft. When I was at Isle Salt, in November last, the "Grapeshot," Captain Clark was there trying to buy salt; the merchants hesitated some in taking drafts on the U. S., on account of the panic and so many failing. Captain Clark assured them in the strongest manner possible them you were perfectly good and could not fail, which should hardly supposed he would have done unless authorized by you to do the business for the bark. I had the best reasons to believe the draft would be honored by you, and suppose it will now as soon as Captain Clark shall arrive, if not before. Your position may be right; but if unsound, it will be difficult for your captains to find a market for their drafts at Cape de Verd.

Very respectfully,
(Signed) CHAS. H. COLBY.

George Law, *New York.*

109 *Document N.—Annexed to answer.*

From Joseph S. Clark, Rio de Janeiro, Aug. 24th, 1857, to George Law, New York.

Rio de Janeiro, *August 24th*, 1857.

Dear Sir: I arrived here on the 10th, and found the market in such a state at the river La Platte, considered it policy to sell my cargo here, which I have done for 680 rays the alquare, which is about 40 cents per bushel, which is the highest quotation in the Brazils. I shall finish discharging in about three days, but shall not be able to get any freight until after the arrival of the steamer of the 8th of September; there is now over one hundred and seventy bags of coffee in first hands, and but few vessels in harbor, coffee ruling two cents higher in this market than the last quotations from the United States. Such is the prospect before me. I would have wrote before this, only I had not decided to discharge at this port; and even now cannot write anything definite, except have sold at that price, and as soon as I am discharged will give you a more detailed 110 account of my proceedings. One thing is certain, I am making no money; if I save myself at the end of the voyage, it will be all I can do.

Respectfully yours,
(Signed) J. S. CLARK.

Document O.—Annexed to answer.

From Joseph S. Clark to George Law, N. Y.

Rio de Janeiro, *Sept.* 16*th*, '57.

Dear Sir: I cannot remit to you as I anticipated, in consequence of being so long detained in port and the prospect of freights. I have been offered sixty cents for New York, eighty cents for New Orleans, forty shillings for the channel, and forty-five for Trieste. I don't feel warranted to accept such offers at present. I have carried one low freight and do not feel disposed to take another just yet. Coffee is very high and only bought or shipped as the case may be, according to orders from the United States, and only to load 111 such vessels as fetch cargoes and orders to purchase; the fact is, business is dreadful, and I can't tell when, if ever, it will be better.

With due respect, I remain your obedient servant,
(Signed) JOSEPH S. CLARK.

Document Q.—Annexed to answer.

From Joseph S. Clark, Rio de Janeiro, Sept. 29th, 1857, to George Law.

Rio de Janeiro, *Sept.* 29*th*, 1857.

Dear Sir: By the Sunny South, which sails to-morrow, you will find in the report the "Grapeshot" up for Calcutta, but there is nothing definite yet. I am offered three dollars per barrel for flour, and if my copper was better I would take it; freights for the United States are so small, I can't live at it; think I will pick up something soon; will let you know in time.

Very respectfully yours,
(Signed) JOSEPH S. CLARK.

112 *Document R.—Annexed to answer.*

From Joseph S. Clark, Rio de Janeiro, Oct. 19, 1857, to George Law, New York.

Rio de Janeiro, *Oct.* 19*th*, 1857.

Dear Sir: You will find by this I am still in this port; how long I shall remain here I cannot say; this much I do say, that I don't feel warranted to carry freights for nothing. With the prospect of freights in the United States, I don't feel like going to New York for 30 cents a bag for coffee. My expenses is not much more at Rio than it would be in New York. I shall therefore stop, unless I get a voyage to India, which I am in hopes of doing after the arrival of the next English mail.

Yours very respectfully,
(Signed) JOSEPH S. CLARK.

To the Hon. GEORGE LAW, *New York.*

113 *Document S.—Annexed to answer.*

From Joseph S. Clark, Rio de Janeiro, Jan'y 9th, 1858, to George Law, New York.

RIO DE JANEIRO, *Jan'y 9th,* 1858.

DEAR SIR: I arrived at this port after being absent from it fifty-seven days. I lay here so long that I became discouraged; nothing doing in freights to pass time and pay expenses. I made a voyage to Cape Verd Islands, and got another cargo of salt. On my arrival back I find the business has not improved; and since the arrival of the mail of the 5th from Europe with such deplorable news, and so much paper returned with protests attached to them, it has created a panic in the Brazils; the consequence is, on the 7th the Bank of Brazil suspended specie payment, and gold is sold in the streets and elsewhere for twenty-five per cent., and business is entirely suspended for the present; there is now six hundred thousand bags of coffee on hand, but no confidence, and consequently nothing 114 doing. I had sold my cargo for sixty-five cents per bushel the day after my arrival, which would have left a profit of $3,150; but the day after the mail arrived, I called on the purchaser for a small amount on account and he declined to give it to me. I consequently refused to deliver him the salt; consequently it is considered no sale; thus things stand at present. The total failure of over eighty of the best houses in Hamburg, with the prospect of more, has caused a panic; and many of the large houses in Rio have closed. The news from the United States is more favorable, and I think there will be something doing in a few days; the port is full of vessels laying up. The first offer I get, if it will pay expenses, shall take it. I can't promise anything, but have taken good care of the vessel, and hope to do something better than what I have done. This panic cannot last another year throughout the globe.

With respect, I remain, dear sir, your ob't servant,
(Signed) JOSEPH S. CLARK.

115 *Document T.—Annexed to answer.*

From Joseph S. Clark, Rio de Janeiro, Apr'l 7th, 1858, to George Law.

RIO DE JANEIRO, *April 7th,* 1858.

SIR: I commence loading to-morrow for New Orleans, with coffee at 50 cents per bag. I have just hove the "Grapeshot" out and found a large quantity of her copper off and the vessel somewhat wormed, and what copper there was remaining was so badly worn, was obliged to recopper her at no small expense, and am afraid I will be obliged to bottomry the vessel to pay her bills, and as I have had such infernal bad luck in obtaining freights with her, that my advice is for you to insure her to the full amount. I dare not run the risk of going to sea with the vessel. If I should meet with an accident, it would ruin me, if I am not already ruined by running her. I am in hopes to be away by Saturday, the 10th of April.

Ans 3d

Yours respectfully,

(Signed) JOSEPH S. CLARK.

116 Hon. GEORGE LAW, *New York*. (In duplicate.)

P. S. I desire you to insure from Rio de Janeiro to New Orleans without fail.

Document U.—Annexed to answer.

From Joseph S. Clark, Rio de Janeiro, Apr'l 10th, '58, to George Law.

2d

RIO DE JANEIRO, *April 10th*, 1858.

DEAR SIR: I have taken up for New Orleans, and shall commence loading Saturday or Monday, and hope to sail on or about the 15th; have been obliged to recopper the vessel, which has increased the expenses to such an extent that I am obliged to bottomry the vessel to get her out of port. You will please to insure the "Grapeshot" from this to New Orleans direct, in consequence of such tough times since I took charge of the "Grapeshot." I fear that if an accident should happen before I arrived in the United States, that it would inconvenience me to fully pay up for my half of the vessel; 117 therefore I wish you to be secure, that you may not lose anything by me if anything happens.

Very respectfully,

(Signed) JOSEPH S. CLARK.

Document V.—Annexed to answer.

From Joseph S. Clark, Rio de Janeiro, April 10th, 1858, to George Law.

3

RIO DE JANEIRO, *April 10th*, '58.

DEAR SIR: I have taken up for New Orleans, which I advised you of in my last letter. I shall commence loading to-morrow or Monday, and shall be away about the 15th. I have been obliged to recopper the "Grapeshot." That additional expenses together with the unusual quantity of sickness has increased my expenses to the extent that compels me to bottomry the vessel to pay her bills. You will therefore please insure the "Grapeshot" from this port to New Orleans direct. My crew and myself have all been down with the fever; but I have escaped better than my neighbors, losing only three

of my ship's company. In consequence of a continuance of
118 bad luck since I took charge of the "Grapeshot," I desire
you would not permit her to be run any longer without insurance; for this reason, if an accident should happen to her, I very much fear I should not be able to finishing paying for her; for that reason only, I wish you to secure yourself.

Yours very respectfully,

(Signed) JOSEPH S. CLARK.

Document "W."—Annexed to answer.

From Joseph S. Clark, Rio de Janeiro, April 16th, 1858, to George Law, New York.

RIO DE JANEIRO, *April 16th*, 1858.

DEAR SIR: I am loaded, and will go to sea in the morning, bound to New Orleans; freight 55 cents per bag. I have been obliged to bottomry the "Grapeshot" for her repairs and coppering, for $9,000, payable twenty days after my arrival in New Orleans. As soon as I arrive I will telegraph to you, and you can render what assistance you think proper. I have wrote to you by several vessels to
insure the Grapeshot from this port to New Orleans, which
119 I hope you have done before this reaches you; if you have
not done so, please do so as soon as you get this, as it will go
to sea before I do. I got my money much less than any other vessel that has bottomried, and there are many that have done so.

I remain, dear sir, yours, very respectfully.

(Signed) JOSEPH S. CLARK.

To the Hon. GEORGE LAW, *New York, U. S.*

Document X.—Annexed to answer.

From Joseph S. Clark, New Orleans, June 6th, 1858, to George Law, New York.

NEW ORLEANS, *June 6th*, 1858.

MR. LAW:

DEAR SIR: The Grapeshot is at quarantine, below the city, where she is to stop for two days for fumigation before she is permitted to come up. I don't know if you received my letter from Rio de
Janeiro to insure the Grapeshot from that port to this. If so,
120 I wish you would send me a copy of the policy. You was
advised in my last letter from Rio that I was obliged to bottomry the vessel for a large amount. I will state, too, as brief as possible, on my last passage from the Cape de Verds the vessel got to leaking so bad in a seaway that it was with difficulty I kept her afloat. She had so much water in her at the times that the salt washed and melted away, so that the cargo fell short between nine hundred and a thousand bushels.

I discovered she had run off the copper in many places the

voyage previous, and she leaked so bad I was fearful she was wormed, which proved to be the fact. When I hove her out at first to look at her bottom, after getting her down I found the copper entirely worn through, almost every sheet that was remaining; was obliged to take it all off and put other on; also put on new sheer and several engraving pieces, which has cost heavy, as you will find when you see the accounts. But, sir, as much as I have lost for the last two years, I pledge you my word I will stick to you until I
fetch her out of debt, or so that you shall lose nothing by
121 me. I want her to be kept fully insured in one of your
offices, or I will insure her in New Orleans, whichever you desire; but first of all this bottomry has to be raised, and my affairs are in such a state in New Orleans that I can't possibly raise the amount. You must, therefore, send me the power to get the money, or send a special agent out and settle the thing up, as it will be a ruinous thing to suffer her to be sold at this place and at this season of the year to pay it. She would not fetch one-half her cost. My freight amounts to some over two thousand dollars, and in order to get the money at a less rate in Rio I gave the bottomry on vessel and cargo. Twenty days are allowed to take up the bottomry after her arrival in this port, which will be from the seventh of June. Had I not taken the fever after the vessel was hove out, I could have saved much; but I was taken down; my mates was in the hospital and most of my crew. I would like to settle this, that I might give you a more satisfactory impression of her than you now most
likely entertain. It remains for you to decide in what way
122 this very unprofitable business is to be settled.

Very respectfully, your ob't servant,

J. S. CLARK.

George Law, Esq., *New York City.*

Document Y.—Annexed to answer.

Despatch from E. G. Clark, New Orleans, June 7th, 1858, to George Law, signed, as presumed, by mistake at telegraph office, E. G. Clark, insted of J. S. Clark.

The Magnetic Company Morse Line, 43 *Wall st.*

[Telegraphic despatch.]

New Orleans, *June 7th,* 1858.

George Law:

The bark Grapeshot arrived at the levee to-day. You will please make arrangements to take up the bottomry bond due twenty days after arrival, gave on her at Rio Janeiro, which I advised you of before leaving that port.

I wrote yesterday all particulars. Please answer this immediately.

(Signed) E. J. CLARK.

End of documents attached to answer.

123 U. S. District Court, eastern district of La.

Amended and supplemental libel.—Filed November 8th, 1858.

WALLERSTEIN, MASSET & Co. *vs.* BARK "GRAPESHOT" AND FREIGHT, GEORGE LAW, claimant.	7,370.

The supplemental and amendatory libel of Wallerstein, Masset & Co. against the bark Grapeshot, her tackle, apparel, and furniture, and against all persons intervening lawfully for their interest, alleges as follows:

First. That not having supposed that there would be any difficulty or delay in the payment of the bottomry bond declared upon in the original libel, and not having apprehended there would be any necessity for a suit on said bond, they did not at first send to their agent in New Orleans, Theodore Brierre, the bills and accounts, showing the items of indebtedness of the bark "Grapeshot"
124 in Rio de Janeiro, which gave rise to the necessity of the master of the bark, Joseph S. Clark, borrowing on bottomry; but that having been advised by their said agent that he had been compelled to institute a suit on their behalf to recover the amount of the bottomry bond, and directing them to send him the said account, they have accordingly sent them from Rio; and having been received by him here in New Orleans in the last few days, he now presents the same to this honorable court as part of his pleadings, and prays that they may be placed on file as part of their libel, to the end that the respondent may have due notice thereof. These said documents are four in number, and are certified by Robert G. Scott, United States consul at Rio, and are hereunto annexed for reference, and marked A, B, C, and D, respectively; wherefore libellants pray for leave to file this supplemental libel, and for judgment according to the prayer of their original libel.

DURANT & HORNOR, *Proctors.*

125 Theodore Brierre, personally appearing, on oath deposes that he is the agent, in this city, of the libellants, and that the allegations of the foregoing supplemental and amendatory libel are true.

(Signed) TH. BRIERRE.

Sworn to and subscribed before me.

(Signed) ROB. M. LUSHER,
U. S. Com'r.

New Orleans, November 8th, 1858,

NOTE.—Libellants' accounts, documents "A," "B," "C," "D," respectively, referred to in the foregoing amended libel, will be found with the depositions taken in support thereof at Rio de Janeiro, hereinafter copied, — pages.

Attest:

ROB. M. LUSHER, *D'y Clerk.*

U. S. District Court, for the eastern district of Louisiana.

126 *Affidavit of libellants' agent for a commission.—Filed November 8th,* 1858.

WALLERSTEIN, MASSET & Co.
vs. } 7,370.
BARK "GRAPESHOT."

Theodore Brierre, agent of libellants, who are all absent, being duly sworn, says that the members of the commercial firm of Rostron, Dutton & Co., and of their clerks; the members of the firm of Harrah & McLennan, and their clerks; the members of the firm of Esling & Alvarenzas, and their clerks; Robert G. Scott, jr., esq., U. S. consul, and his clerks; the clerks of Wallerstein, Masset & Co.; Joseph S. Clark, late master of the Grapeshot, and others whose names are unknown to deponent, all of whom reside or are now in Rio de Janeiro, are material witnesses for the libellants in this case; that a commission should issue to take their depositions, and one hundred and twenty days be allowed for the return thereof.

(Signed) TH. BRIERRE.

Sworn to and subscribed before me.

R. M. LUSHER,
U. S. Com'r.

New Orleans, Nov. 8th, 1858.

127 *Marshal's return of service of libellants' interrogatories on claimant.*

Of libellants' interrogatories to witnesses in Rio, filed the 8th November, 1858, I served a copy on Mess. Singleton & Clark, proctors for claimant, on this 8th of November, 1858, with notice to cross the same within five days, by handing the same to P. E. Bonford, esq., a legal associate of said firm in their office; and on the 9th November served a copy of the amended libel on said proctors, per C. B. Singleton, esq., in person, at his office in this city.

Nov. 9th, 1858.

(Signed) CHAS. CATOIR, *D'y M.*

NOTE.—Commission, with libellants' interrogatories, accounts annexed, issued Nov. 29th, 1858, addressed to U. S. consul at Rio; returned May 16th, 1859, and depositions filed.

128 United States District Court, eastern district of Louisiana.

Motion of defendant for commission.

WALLERSTEIN, MASSET & CO.
vs.
BARK GRAPESHOT AND FREIGHT, GEORGE LAW, claimant. } 7,370.

SATURDAY, *December* 18*th*, 1858.

Court met at 10 a. m. Present: Hon. Theo. H. McCaleb.

On motion of Singleton & Clark, proctors for George Law, claimant and respondent herein, and on suggestion to the court, that a commission has been issued herein, at the instance of libellants, to examine witnesses at Rio, and that interrogatories have been forwarded therewith on behalf of libellants, and no cross-interrogatories on behalf of claimant and respondent, because of a misunderstanding between the proctors; and on further suggestion that said claimant and respondent has filed cross-interrogatories to be propounded to libellants' witnesses, as mentioned in the said 129 direct interrogatories, it is ordered that a commission issue herein, directed to the United States consul, Robert S. Scott, or to the United States secretary of legation at Rio de Janeiro, commanding either of them to take the answers of the witnesses examined under libellants' commission, and mentioned in these cross-interrogatories, and forward the same, with said original commission, or if the latter has been forwarded, as soon as the same can be completed, to this court. And it is further ordered, that a copy of the above order be endorsed on said commission herein prayed for.

We have no objections to this motion and order.

N. O., 17th Dec., 1858.

DURANT & HORNOR,
For Libellants.

NOTE.—Commission, with claimant's cross-interrogatories, issued Dec. 18th, 1858, addressed to U. S. Consul at Rio, not yet returned up to May 25th, 1860.

ROB. M. LUSHER,
D'y Clerk.

130 NOTE.—1858, Nov. 17th.—Commission, with interrogatories and cross-interrogatories annexed, issued for claimant to New York city, addressed to any U. S. commissioner, or Louisiana commissioner. Names of witnesses omitted.

1859, Nov. 15th.—Commission returned with depositions, under seal of U. S. Commissioner R. Stilwell, New York, and depositions opened. Filed Dec. 12, 1859.

1859, Feb'y 25th.—Depositions taken de bene esse for claimant, rec'd from Boston, under seal of Sidney Webster, U. S. commissioner. Opened in court Dec. 13th, 1859.

Nov. 5th.—Depositions (3) taken de bene esse for claimant, rec'd from New York, under seal of U. S. Commissioner R. Stilwell. Opened in court Dec. 12th, 1859.

1859, May 16th.—Depositions for libell'ts, from Rio de Janeiro, received with commission; returned executed by U. S. Consul, R G. Scott.

May 25th, 1860.

Attest:

ROB. M. LUSHER,
D'y Cl'k.

131 U. S. District Court for the eastern district of Louisiana.—February term, 1859.

Wallerstein, Masset & Co.
vs.
Bark Grapeshot, Freight, George Law, claimant.
} In admiralty.

Wednesday, *May 18th*, 1859.

Court met at 10 a. m. Present: Hon. Theo. H. McCaleb.

On motion of Durant & Horner, of counsel for libellants, and on showing to the court that the depositions of certain witnesses in Rio, taken under commission on behalf of said libellants, have been returned, and are now on file in the clerk's office, it is thereupon ordered by the court that the proctors of claimant show cause on Saturday next, the 21st day of May, 1859, at 10 o'clock a. m., why the depositions aforesaid should not be read in evidence on the trial of this cause.

132 U. S. District Court, eastern district of Louisiana.

Claimant's exceptions to depositions.—Filed May 15th, 1859.—Filed May 26th, 1859.

Wallerstein, Masset & Co.
vs.
Bark Grapeshot, Freight, George Law, claimant.
} 7,370.

In answer to the rule herein taken by libellants, on May 18th, 1859, calling on claimant to show cause why the depositions of certain witnesses on behalf of libellants, claimed to have been taken in Rio de Janeiro, empire of Brazil, should not be read in evidence on the trial of this cause, claimant, through his proctors, excepts to the admissibility of the said depositions in evidence, on the following grounds:

1st. That the cross-interrogatories propounded by claimant and respondent have not been answered by any of the witnesses. (Dunlap 8, p. 258; 3 Wash., C. C. Rep., 328; 6 La., New Series, Rep. 313.)

2d. That the following named persons, purporting to have been examined, are not named in the commission, now in the interrogatories propounded to the witnesses, to wit: George J. Esling, John F. McLennan, William Knight. 133

3d. That it does not appear that the witnesses were sworn by the officer purporting to execute the depositions.

4th. That it does not appear that the depositions were signed or executed in the presence of the officer purporting to execute the commission. (Louisiana Code of Practice, a'tl. 433, Lee *vs.* Lee, 1 La. Annual Rep., 318.)

5th. That it does not appear by whom the depositions were reduced to writing. That it should appear that they were reduced to writing by the magistrate himself, or by deponents in his presence. (Act of Congress, Sept. 24, 1789, sec. 30. Bus *vs.* Morrison, 1 Ket, 8, 6, Rep., p. 351; 1 Humen La. Digest, page 580, No. 3.)

6th. That there is no proof of the capacity of the officer executing the commission. (Stiff *vs.* Nugent, 5 Rob., La Rep., p. 217.)

134 7th. That there is no proof from the magistrate's certificate, that the requisites of the law have been complied with. (Dunlap Adm. Practice, side paging 261.)

8th. That it does not appear that the proper adjournments were made and had in the taking of the depositions.

9th. That the return is not yet properly sealed.

SINGLETON & CLACK,
Proctors for Claimant.

U. S. District Court, eastern district of Louisiana.

Admission of depositions taken for libell'ts at Rio.

WALLERSTEIN, MASSET & CO.
vs.
BARK GRAPESHOT.
} 7,370.

MONDAY, *May* 30*th*, 1859.

Court met at 10 a. m. Pres't: Hon. Theo. H. McCaleb.

The court having considered the grounds urged by claimant in opposition to libellants' rule for the reading of the depositions taken at Rio and a commission from this court, and being satisfied there is no reason in law why the same should not be read in evidence, it is ordered that the said rule be made absolute, reserving claim't's exceptions to the effect thereof.

135 U. S. District Court, eastern district.

Hearing.

WALLERSTEIN, MASSET & CO.
vs.
BARK GRAPESHOT AND FREIGHT, GEORGE LAW, of N. Y., claimant.
} No. 7,370.

MONDAY, *December* 12*th*, 1859.

Court having met. Pres't: Hon'l Theo. H. McCaleb.

This cause of bottomry came regularly up for hearing, Thomas J. Durant, esq., appearing for the libellants, and F. H. Clack, esq., for the claimant. The libel and answer having been read to the court, the libellants offered and read in evidence the following documents:

1st. The bottomry bond annexed to the libel, and marked "W."

2d. The deposition of Joseph S. Clark, master of the
136 "Grapeshot," taken at Rio de Janeiro, 8th Feb'y, 1859,
(claimant's exceptions thereto being reserved.)

3d. The depositions of Geo. J. Esling, John F. McLennan, and Wm. Knight, respectively, together with account "A," account current "B," libellants' proposal to advance money on bottomry, account of port charges and disbursements, account of repairs, (Harrah & McLennan's,) and account of supplies, &c., (Esling & Alvowanges,) annexed to said depositions.

The claimant offered and read in evidence, (the libellants expressly excepting thereto, and their exception being reserved):

1st. The depositions of Johann C. Eilers, Philip Myers, Herman Fisher, and Charles Hillman, taken at New York city, under commission, by U. S. Commissioner R. E. Stilwell, and filed under seal Nov. 5th, 1859.

When the further hearing of the court was continued until tomorrow, 10 a. m.

137 U. S. District Court, eastern district of Louisiana.

Hearing.—2nd day.

WALLERSTEIN MASSET & CO., of Rio de Janeiro,
vs.
THE BARK "GRAPESHOT," PROCEEDS AND freight, George Law, claimant.

TUESDAY, *December* 13*th*, 1859.

The hearing of this cause was resumed, T. J. Durant, esq., for the claimant. The claimant offered in evidence the oral testimony of Alfred Moulton, (with documents annexed,) and A. F. Elliot, respectively, noted and filed; and the libellant offered, in rebuttal, the oral testimony of Geo. Nathan and P. A. Giraud, respectively, also noted and filed. The claimant further offered in evidence the register of the barque, and the inventory thereof, deposited in court by the U. S.
marshal, (both of which were excepted to by the libellants
138 as irrelevant to the issue;) also the depositions of John
Graham, W. S. Hanford, and John Sims, taken de bene esse
at New York, by U. S. Commissioner Stilwell, and that of Adam W. Thaxter, taken de bene esse at Boston, by U. S. Commissioner Sidney Webster, (which said depositions were also excepted to by libellant.) The claimant also offered the certified copies of consular returns on arrivals and departures of American vessels from Malaga and other European ports, in 1857 and '58, (likewise objected to by libellants as impertinent to the issue.)

Robert Howes, a witness for claimant being absent, an admission was filed as to the nature of this testimony.

The further hearing was continued until to-morrow at 10 a. m.

Submission.

WALLERSTEIN, MASSET, & CO.
vs.
BARQUE "GRAPESHOT," &C. } 7,370.

WEDNESDAY, *December* 14*th*, 1859.

Court having met, pres't Hon. Theo. H. McCaleb.

This cause was argued at length by Thos. J. Durant, esq., for the libellants, and by F. H. Clark, esq., for the claimant, when the Court took the case under advisement.

139 U. S. District Court, eastern district of Louisiana, in admiralty.

WALLERSTEIN, MASSET & CO., OF RIO DE Janeiro, Empire of Brazil, libellants on bottomry bond,
vs.
THE BARGE "GRAPESHOT," PROCEEDS AND freight, George Law, of New York, claimant.

Evidence effered for libellants on hearing, Dec. 12th, 13th, 1869.

1st. Depositions of Jos. S. Clark, master of the barque taken, for libellants at Rio by the U. S. Consul. Read subject to claimants express exceptions thereto. Pages 147 to 153, 8 inc.

2d. Depositions of Geo. J. Esling, John F. McLennan, Will'm Knight, also taken at Rio. Pages 154 to 174 i'c.

Documents and accounts referred to by witnesses, 174–196.

Testimony of George Nathan, P. A. Giraud, examined in court, 197–198.

140 U. S. District Court, eastern district of Louisiana.

Interrogatories on behalf of libellants to witnesses in Rio.—Filed Dec. 18th, 1853.

WALLERSTEIN, MASSET & CO.
vs.
BARQUE "GRAPESHOT." } No. 7,370.

Interrogatories to be propounded to, and answered under oath by, the members of the firm of Rostron, Dutton & Co., and by the clerks of said firm; by the members of the firm of Harran & MacLennan, and by their clerks; by the members of the firm of Esling & Alvarengas, and by their clerks; by Joseph S. Clark, late master of the barque "Grapeshot;" by Robert G. Scott, United States consul at Rio de Janeiro, and by his clerks; by the clerks of the house of Wallerstein, Masset & Co., and by other witnesses, all residing in or now being in Rio de Janeiro, in the empire of Brazil; witnesses to be produced, sworn, and examined by virtue of the accompanying 141 commission on behalf of the libellants.

N. B.—It is understood that only one member of a firm and only one clerk need be examined, provided he can answer all the interrogatories; and that no objection will lie to the return of the commission on the grounds that all the members of a firm or all the clerks have not answered.

Depositions of Joseph S. Clark, taken before Robert G. Scott, U. S. consul at Rio de Janeiro, 8th February, 1859, on behalf of libellants. Read in evidence, (claimants exceptions reserved,) December 12th, 1859.

1st. What is your full name, age, and residence; how long have you lived where you now reside?

Ans. Joseph S. Clark; my age is 44 years; I am a ship-master.

142 2d. What is your present employment or occupation? how long have you been so employed? if you state that you are not now employed by either of the persons or firms mentioned in the heading of these interrogatories, but have formerly been so employed, then please state in what capacity, and during what time; and give the dates of the commencement and end of your employment.

Answer. I am this time master of the ship "Southern Eagle," and have been so for seven days; my vocation has been that of a mariner, and have been so employed since I was nine years of age.

3d. Do you know the American bark "Grapeshot," and her former master, Captain Joseph S. Clark? how long have you known either or both? was the barque at Rio in the spring, i. e., from January to June of 1858? from what port or place did she then come? who was in command as master? at what date did she arrive? to whom was she consigned? how long did she remain in Rio? at what date did she go away?

143 Answer. I do know the barque "Grapeshot;" she was in Rio in spring of 1858, from the Cape de Verde Islands; she arrived on the 2d January, and was consigned to Messrs. Rostoom, Dutton & Co.; I commanded as master by myself; she left this port on the 19th of April, 1858.

4th. What was the condition of the barque "Grapeshot" when she arrived in Rio at the aforesaid date? answer as fully and as much in detail as you can; did she meet with any accident in coming to Rio, or in the harbor after arrival? if yea, please state as fully as you can the origin and causes of the accident, and the effect thereof upon the barque.

Answer. She leaked very badly during the entire voyage to the Cape de Verde Islands and back, more particularly on her return with cargo; during said voyage she washed over nine hundred bushels of salt by the water washing over the skin and dunnage.

144 5th. What cargo, if any, was brought into Rio in the barque "Grapeshot" on the said voyage? state fully of what it consisted; was the said cargo sold in Rio? if yea, to whom was it sold? what was the result or proceeds of the salt? have you in your possession or under your control the original account sales? if yea, please annex the same to your answer thereto, and if you cannot annex the original, than please annex a copy; are said account sales correct?

Answer. Cargo of salt; it was sold in Rio by Messrs. Bostoon, Dutton & Co., consignees of the barque; I don't know to whom it was sold; I cannot, of my own knowledge, answer the rest of this question; I have not the original account of sales.

6th. Please look at the document accompanying the interrogatories, headed port charges and disbursements of the American barque "Grapeshot," "Captain Clark from Cape de Verd to this port with salt, and hence to New Orleans with coffee," and signed Rio de Janeiro, 15th April, 1858, Bostoon, Dutton & Co., and say
145 what you know with regard to said documents; is the same true and correct in all particulars, and does it actually represent the real expenses of the barque "Grapeshot" during the time she was at Rio on that voyage? were all and each of the sums appearing as items on said account really paid out on account of the barque "Grapeshot?" or if not paid out, are they really chargeable to said barque as reasonable and proper charges according to general commercial usage at the port of Rio de Janeiro?

Answer. They are all right and correct, and I answer affirmatively to the whole of this question.

VII°. Look at the item in said account, marked advertising, 98.20, and state what the said advertising was; state whether you can annex to your answers hereto, copies of the said advertisements; and if you can, please annex them; but if you cannot, state them, the purport and substance of the said advertisements?

146 Answer. The advertising was for a bottomry bond on the barque "Grapeshot," to pay her bill of repairs, &c., and I hereto annex said advertisement.

VIII°. Please to look at the entry in said account, reading "Oct. 31, old ac. left over from this date, r's 1,808, 780," and state what you know in regard to said entry fully and accurately, so that it shall be clearly explained what are the said old accounts. Please annex to your answer to this interrogatory a full and complete transcript of all of said accounts, item by item, showing in a clear and intelligible manner how the said balance of 1,808, 780, is obtained; and add such explanations as may be necessary to render the account clear.

Answer. This is cash due to Messrs. Rostoon, Dutton & Co., from my former voyage, and is correct; my consignees, Messrs. Bostroon, Dutton & Co., can, I think, prove each item; I was satisfied that it was just at the time or I would not have paid it.

147 IX°. Please to look at the account also accompanying these interrogatories, and headed Rio de Janeiro, April 12th, 1858,

barque "Grapeshot" and owners, Dr., to Harrah and MacLennan, No. 108, Rua da Suada, and state fully and at large all you know in regard to said account; state whether the various items charged in the said account were or were not really furnished to the barque "Grapeshot" for her use, at the request or order, express or implied, of the master of said barque; and state whether or not the prices charged are and were fair, reasonable, and proper prices at Rio; and state everything else which you may personally know calculated to make said account clear to the court.

Answer. This bill is correct and was paid out of the funds obtained by the bottomry bond; and the prices at the time at this city were fair, reasonable, and proper, and were furnished for the bark at my request.

X. Please to look at the account annexed to these interrogatories
148 and headed Rio de Janeiro, 1858, "barque Grapeshot," Captain Clark, bought of Esling and Alvarengas, No. 7, Rua Fiesca; and state fully and at large all you know in relation to the said account; state whether the various items charged in said account were or were not really furnished to the barque "Grapeshot" for her use, at the requst or order, express or implied, by the master of said barque; and state whether or not the prices charged are and were fair, reasonable, and proper at Rio; and state everything else which you may know personally calculated to make said account clear to the court.

Answer. This bill is also correct and is reasonable, fair, and proper, and were the prices at the time at this city, and were furnished for the "Grapeshot" by my order and request as master.

XI°. What do you know of a bottomry bond made by Captain Joseph S. Clark, master of the American barque "Grapeshot," at Rio, on the 15th day of April, 1858, for the purpose of securing a loan made to him on hypothecation of the vessel's bottom and
149 her freight, from Rio de Janeiro to New Orleans, by Messrs. Wallerstein, Masset & Co., of Rio, for nine thousand seven hundred and sixty-seven dollars and forty-five cents? state all the circumstances to your own knowledge which relate to said bottomry loan and bond fully and accurately.

Answer. I advertised for bottomry to pay my bills for repairs and other expenses on the barque according to the advice of the United States Consul as I had no other means of paying them except by sale of my vessel.

XII. Were any proposals for said bottomry loan made by Captain Clark, or any one acting for him? State fully and accurately all the proposals, means, and efforts made by Captain Clark or his agents to procure said loan in Rio.

Answer. I made no proposals, nor did I authorize any one to do so for me.

XIII. For what purposes was said bottomry loan made by
150 Captain Clark? what debts were then due by the "Grapeshot" at Rio which it was necessary to pay off? State all of these accurately and fully, so as to make the matter as clear as possible?

Answer. For the purpose of obtaining money to settle the ship's bills; for further information I refer you to Messrs. Rostoon, Dutton & Co., and my own account current, now in the hands of Mess. Durant & Hornor, counsel for libellants, which is true and correct in every particular.

XIV. Why was the precise sum of nine thousand seven hundred and sixty-seven dollars and forty-five cents needed by the barque "Grapeshot," and borrowed by Captain Clark? Please to state in the form of an account exactly how that particular sum for which the bond was given became necessary to the "Grapeshot;" and you will please to add to your answer here all such explanations as may be necessary or useful in rendering said account entirely clear and intelligible to the court, and to show exactly how that sum came to be required.

152 Answer. To pay the ship's bills in Rio; and this sum was not sufficient, and I became responsible for over 800 dollars, which has since been paid.

XV°. State into whose possession or hands went the sum of money loaned as described in said bond; to whom was said money paid out, and for what account; state all the facts connected with these matters, so as to render them perfectly clear.

Answer. It was paid into the hands of Messrs. Rostoon, Dutton & Co., for the purpose of disbursing the ship, and was paid to those to whom the ship was indebted as per acc't current rendered by them and myself.

XVI°. Do you know any other matter or thing which may be useful to Wallerstein, Masset & Co., who are suing on the bottomry bond to recover the amount thereof out of the barque "Grapeshot" and her freight? If yea, please state the same as if you were thereunto specially interrogated.

(Signed) DURANT & HORNOR,
For Libellants.

153 Answer. All else that I know in this case is, that Mess. Wallerstein, Masset & Co. advanced the money on the barque and freight to New Orleans, taking a bottomry on the same, they being the lowest bidders for the same. I believe they are the holders of a fair and just debt, and that it ought to be paid.

Further this deponent saith not.

(Signed) JOSEPH S. CLARK.

Advertisement for bottomry annexed to Jos. S. Clark's depositions and filed with same.

Precisa se a risco maratimo sobreo casco e pete da mesma a quantia de $16,000 pava pagamento das despezas neste porto, (da barca Americana "Grapeshot," com destino a New Orleans) aquemo convier diriza sua proposta eno
154 carta fechada ad consulado dos Estados Unidos aré o dia 14 do corrente ao merio dia.

Wanted on bottomry bond upon hull and freight of American barque Grapeshot, (hence to New Orleans) sixteen centos of reis, for expenses in this port. Sealed proposals will be received at the office of the United States Consul in noon of the 14th instant.

I do hereby certify that the annexed advertisement is the one referred to in the deposition of Joseph S. Clark.

(Signed) ROB'T G. SCOTT, Jr.,
U. S. Consul.

United S. District Court, eastern district of Louisiana.

Wallerstein, Masset & Co.
vs.
Barque "Grapeshot," &c., Geo. Law, claimant. } No. 7,370.

Depositions of George J. Esling, John F. MacLennan, and William Knight, for libellants, taken before U. S. Consul at Rio de Janeiro, on interrogatories on behalf of libellants, annexed to commission, Feb'y 17, 1859. Read in evidence for libellants, Dec. 12, 1859.

155 Int'y I°. What is your full name, age, and residence. How long have you lived where you now reside?

George J. Esling answers and says: Answer. My name is George J. Esling; my age is forty three, and my residence is No. 7, Rua Fresca, Rio de Janeiro; I have resided there 4½ years.

John F. McLennen answers and says: My name is John F. McLennen; I am thirty years of age, and have resided in this city for five years.

William Knight, to the 1st interrogatory, answers and says: William Knight; thirty-five years; in Rio de Janeiro, some twelve years.

Int'y II°. What is your present employment or occupation? How long have you been so employed? If you state that you are not now employed by either of the persons or firms mentioned in the
156 heading of these interrogatories, but have formerly been so employed, then please state in what capacity, and during what time, and give the dates of the commencement and end of your employment?

George J. Esling, to the 2d int., answers: Answer. I am a ship-chandler, and have been employed as such four and a half years.

John F. McLennen, to the 2d int., answers: I have always been a ship-wright by trade.

William Knight, to the 2d int., answers: Merchant for seven years, now partner in firm of Rostrom, Dutton & Co.

Int. III°. Do you know the American barque "Grapeshot," and her former master, Captain Joseph S. Clark? How long have you known either or both? Was the barque in Rio in the spring, i. e., from January to June of 1858? From what port or place did she
157 then come? Who was in command as master? At what date did she arrive? To whom was she consigned? How long did she remain in Rio? At what date did she go away?

George J. Estling, to the 3d int., answers: I know the barque "Grapeshot" and her former master, Joseph S. Clark; I have known both 2½ years. The barque was in Rio in the spring of 1858, from January to April; she came from the Cape de Verde islands; Joseph S. Clark was the master; she arrived on the 2d of January; she was consigned to Messrs. Rostrom, Dutton & Co.; she went away on the 19th of April, 1858.

John F. McLennen, to the 3d int., answers: Yes, I have known the vessel since her first voyage to Rio; I knew Captain Clark, he was the master of her. I believe the "Grapeshot" came from the Cape de Verdes about New Year's day; she was consigned to Rostrom, Dutton & Co., and sailed from here about the middle of April, 1858.

158 William Knight, to the 3d int., answers: Yes, both; I have known both since September, 1856. The barque was here in March and April, 1858, from the Canary islands, J. S. Clark, master; arrived on January 2d, and sailed 19th April, 1858, for New Orleans; came here to Rostrom, Dutton & Co.

Int. IV°. What was the condition of the barque "Grapeshot" when she arrived in Rio at the aforesaid date? Answer as fully and as much in detail as you can. Did she meet with any accident in coming to Rio, or in the harbor after arrival? If yea, please state, as fully as you can, the origin and cause of the accident and the effect thereof upon the barque.

George J. Estling, to 4th int., answers: The condition of the barque "Grapeshot," when she arrived, was a very leaky one; I know nothing, of my own knowledge, as to accidents to her.

159 John F. McLennen, to 4th int., answers: Leaking badly; I cannot answer the rest of this question.

William Knight, to the 4th int., answers: I don't know the barque's condition, but understood her copper was worn and needed renewing; I did not hear of any accident.

Int. V°. What cargo, if any, was brought into Rio, in the barque "Grapeshot" on said voyage? State fully of what it consisted. Was the said cargo sold in Rio? If yea, to whom was it sold? What was the result or proceeds of the sale? Have you in your possession, or under your control, the original account sales? If yea, please annex the same to your answer hereto, and if you cannot annex the original then please annex a copy? Are said account-sales correct?

George J. Estling, to the 5th int., answers: The barque "Grapeshot" brought a cargo of salt on the said voyage. The said cargo was discharged at Rio; but where it was sold or to whom,
160 and what it brought, I do not know. I have no acc't of sales of the salt.

John F. McLennen, to the 5th int., answers: Salt, I believe; it was discharged here; I know nothing about the sale.

William Knight, to 5th int., answers: Cargo consisted of salt, (about 817 alquenes;) it was sold by us; a copy of account of sales marked "A" annexed, and to which I now refer for particulars. The original account is, of course, in the possession of Captain Clark. The acc't of sales rendered by our house is correct.

Int. VI°. Please to look at the document accompanying the interrogatories, headed "Port charges and disbursements of the American barque 'Grapeshot,' Captain Clark, from Cape Verde to this port with salt, and hence to New Orleans with coffee, and signed 'Rio de Janeiro,' 15th April, 1858, Rostrom, Dutton & Co., and say what you know with regard to said document." Is the
161 same true and correct in all particulars, and does it actually represent the real expenses of the barque "Grapeshot" during the time she was at Rio on that voyage. Were all, and each, of the sums appearing as items on said account really paid out on account of the barque "Grapeshot," or if not paid out, are they really chargeable to said barque, as reasonable and proper charges, according to general commercial usage at the port of Rio de Janeiro?

George J. Esling, to 6th int., answers: The port charges are correct as regards the disbursements. I cannot say, except the item marked Esling, for 2,175, $940, said item having been paid for articles furnished to "Grapeshot" by the order of Joseph S. Clark.

John F. McLennan, to 6th int., answers: I know nothing about these port charges, but the item marked carpenter's ac., Hanah & Mc L. & Co., I think to be a correct account.

William Knight, to 6th int., answers: The account of dis-
162 bursements referred to is signed by me, and I believe it to be perfectly correct in all particulars. I cannot pretend to check each of Captain Clark's acc'ts., but I believe them all to be customary in Rio, and knew them to have been really paid and incurred.

Int. VII°. Look at the item in said account marked "advertising 9,820," and state what the said advertising was. State whether you can annex to your answers hereto copies of the said advertisements; and if you can, please annex them: but if you cannot, state then the purport and substance of said advertisements.

George J. Esling, to 7th int., answers: I cannot answer this question. I know nothing about it.

John F. McLennan, to 7th int., answers: I know nothing about this advertisement.

William Knight, to 7th int., answers: This item is for adver-
163 tising for tenders for a bottomry bond, as is usual in such cases, for some 16 or 18 (centos of reis) thousand mil reis. I cannot annex copies, but they were simply to above effect.

Int. VIII°. Please to look at the entry in said account reading Oct. 31, old ac. left over from this date, 1,808, $780, and state what you know in regard to said entry fully and accurately, so that it shall be clearly explained what are the said old accounts. Please annex to your answer to this interrogatory a full and complete transcript of all of said accounts, item by item, showing in a clear and intelligible manner how the said balance of 1,808, $780, is obtained, and add such explanations as may be necessary to render the account clear.

George J. Esling to 8th int. answers: I know nothing about this, and cannot answer.

John McLennan, to 8 int., answers: I cannot answer it.

William Knight, to 8th int., answers: This item of 1,808, $780, 164 is perfectly correct, and consists entirely of cash advanced by our house to Captain Clark for purchase of 200 sovereigns in October, '57, such sovereigns to be issued by him in the purchase of salt for his acct., and this was done by Captain Clark; an account of sales is annexed marked "A." The words old accounts were used by my clerk, because 1,808, $780, was the exact balance of the barque's acct. with us in October, 1859, including interest and insurance on same from October, '57 to April, 1858; this balance, however, arising entirely from purchase of sovereigns.

Int. IX°. Please to look at the account also accompanying these interrogatories, and headed "Rio de Janeiro, 12th April, 1858, barque Grapeshot and owners, Dr. to Harrah & Mac Lennan, No. 108, Rua da Suada," and state fully and at large all you know in regard to said account. State whether or not the various items charged in the said account were or were not really furnished to the barque "Grapeshot" for her use, at the request or order, express or 165 implied, of the master of said barque. And state whether the prices charged were fair, reasonable, and proper prices at Rio, and state everthing else which you personally know, calculated to make said account clear to the court.

George J. Esling, to the 9th int., answers: I cannot tell whether the articles mentioned in this interrogatory were furnished or not; but the prices charged are reasonable, fair, and proper prices at Rio.

John F. McLennan, to the 9th int., answers: All the items in this account were supplied by me at the order and request of Captain Clark, and the same is correct, and I affirm it to be a very cheap account for Rio de Janeiro.

William Knight, to the 9th int., answers: I know nothing about Harrah and McLennan's account, but always supposed it fair, and charges thereon customary.

166 Int. X°. Please to look at the account annexed to these interrogatories, and headed Rio de Janeiro, 1858, barque "Grapeshot," Captain Clark, bought of Esling and Alvarengas, No. 7, Rua Fiesca, and state fully and at large all you know in relation to the said account. State whether the various items charged in said account were or were not really furnished to the barque "Grapeshot" for her use, at the request or order, express or implied, of the master of said barque, and state whether or not the

prices charged are and were fair, reasonable, and proper prices at Rio; and state everything else which you may personally know, calculated to make said account clear to the court.

George J. Esling, to the 10th int., answers: This account is correct; the various items charged in it were furnished to the "Grapeshot" for her use, by the order of Joseph S. Clark, and the prices charged were fair, reasonable, and proper at Rio.

167 John McLennan, to 10th int., answers: I cannot answer this question.

William Knight, to 10th int., answers: I know nothing about this account.

Int. XI°. What do you know of a bottomry bond made by Captain Joseph S. Clark, master of the American bark "Grapeshot," at Rio, on the 15th day of April, 1858, for the purpose of securing a loan made to him on hypothecation of the vessel's bottom and her freight from Rio de Janeiro to New Orleans, by Messrs. Wallerstein, Masset & Co., of Rio, for nine thousand seven hundred and sixty-seven dollars and forty-five cents. State all the circumstances, to your own knowledge, which relate to said bottomry loan and bond fully and accurately.

Geo. J. Esling, to 11th int., answers: I saw an advertisement in a newspaper sometime in April, calling for proposals for bottomry on barque "Grapeshot," This is all I can say to this question.

168 John McLennan to 11th int. answers: I know nothing about this.

Willliam Knight, to 11th int., answers: This bottomry I know to have been necessary in the closing of the barque "Grapeshot" acc'ts. with us, and also that we received the amount corresponding from Mess. Wallerstein, Masset & Co.

Int. XII°. Were any proposals for said bottomry loan made by Captain Clarke, or any one acting for him? State fully and accurately all the proposals, means, and efforts made by Captain Clark or his agents, to procure said loan in Rio.

Geo. J. Esling, to the 12th int., answers: Captain Joseph S. Clark did advertise for proposals for a loan on a bottomry bond on the barque "Grapeshot," in April, 1858. This is all I know in relation to this.

169 John F. McLennan, to 12th int., answers: I know nothing at all.

William Knight, to 12th int., answers: Proposals were made in usual form through the public papers, and see my answer to 7th interrogatory.

Int. XIII°. For what purposes was said bottomry loan made by Captain Clark? What debts were then due by the "Grapeshot" at Rio, which it was necessary to pay off? State all of these acurately and fully, so as to make the matter as clear as possible.

Geo. J. Esling, to 13th int., answers: For the payment of said barque's bills of repairs, provisions, and other expenses, which are generally incurred on vessels in such cases.

John F. McLennan, to 13th int., answers: I only know that the ship owed Harrah and MacLennan.

William Knight, to 13th int., answers: To close account with
170 us per acct. current, which I annex hereto marked "B," all
the principal amounts in our disbursements accts. were due.

Int. XIV°. Why was the precise sum of nine thousand seven hundred and sixty-seven dollars and forty-five cents needed by the barque "Grapeshot," and borrowed by Captain Clark? Please to state in the form of an account exactly how that particular sum for which the bond was given became necessary to the "Grapeshot;" and you will please to add to your answer here all such explanations as may be necessary or useful in rendering said account clear and intelligible to the court, and to show exactly how that sum came to be required.

Geo. J. Esling, to 14th int., answers: This sum was needed to pay the barque's bills, to enable her to proceed on her voyage. This is all I know about it.

John F. McLennan, to 14th int., answers: I don't know.

171 William Knight, to 14th int., answers: This sum was found
too little, and Captain Clark was obliged to give us further a
draft on Robert Hewes. I refer to our acc't current.

Int. XV°. State into whose possession or hands went the sum of money loaned as described in said bond; to whom was said money paid out, and for what account. State all the facts connected with these matters, so as to render them perfectly clear.

Geo. J. Esling, to 15th int., answers: I do not know into whose hands the sum of money went, but I know Messrs. Rostrom, Dutton & Co. paid the barque "Grapeshot's" bills at the time.

John F. McLennan, to 15th int., answers: I do not know; but Messrs. Rostrom, Dutton & Co. paid our bill.

William Knight, to 15th int., answers: I refer to answers to
172 interrogatory 11th. We, as agents, paid all bills and received
equivalents as per our acc't.

Int. XVI°. Do you know any other matter or thing which may be useful to Wallerstein, Masset & Co., who are suing on the bottomry bond to recover the amount thereof out of the barque "Grapeshot" and her freight? If yea, please state the same as if you were thereunto specially interrogated.

(Signed) DURANT & HORNOR,
For Libellants.

George J. Esling, to 16th int., answers: All else I can state in this case is, that Messrs. Wallerstein, Masset & Co., a large commercial firm in this city, took the bottomry bond on the barque "Grapeshot" and freight to New Orleans in April of 1858, and that they take at least one-half of the bottomry bonds that are given here on American vessels. I have nothing further to state.

Further this deponent saith not.

(Signed) GEO. J. ESLING.

173 John F. McLennan, to 16th int., answers: I greased and hove
out the barque "Grapeshot," and stripped her and repaired
her false keel, put in many graving pieces, many new wenerets,

caulked her from keel to planksheares, resheathed and remtaled her with much heavier metal than he had before. I found many sheets of copper off her bottom, and many worn through, and in consequence the ship was in many places wormed; the copper was entirely worn out that came off the vessel, and about one-fourth part of a regular honeycomb.

Further deponent saith not.

(Signed) JNO. F. McLENNAN.

William Knight, to 16th int., answers: I know nothing more.

Further this deponent saith not.

(Signed) WM. KNIGHT.

In testimony of the taking the depositions of Joseph S. Clark, George J. Esling, John F. McLennan, and William Knight, and that the same were signed and sworn to, and the proceedings
174 therein had and the due execution thereof.

I, the undersigned, have hereunto set my hand and seal of office this the 17th day of February, A. D. 1859.

[SEAL.] (Signed) ROBERT G. SCOTT, Jr.

Fee, fifty dollars.

174 U. S. Dist. Court, east dist. of Louisiana.

WALLERSTEIN, MASSET & Co.
vs.
BARQUE "GRAPESHOT."
} No. 7,370.

Account "A" referred to in and annexed to deposition of William Knight for libellants.

Account sales of salt ex- American b'que "Grapeshot" from Cape Verde. Sold for account and risk of Capt. Clark, Feb'y 16th, '58. 8,216 algrs. salt *a* 720rs. 4 mos		*R*5,916.240
175 JAN'Y 12, '58.		
Charges:		
Duty on 9,180 algs. *a* 50 at	*R*4590.000	
Despatching carriage, &c	67.120	
Brokerage, ½ p. c	29.580	
Interest on charges 35 ds. *a* 10 p. c	5.100	
Discount 4 mos. *a* 10 p. c.	179.210	
Commission & Guartse 5 p. c	295.810	
Fire insurance ⅛ p. c	70.400	
		1061.230
Nett pr'c'ds in cash at date		*R*4,855.010

E. & O. E.

RIO DE JANEIRO, 16*th Feb'y*, 1858.

(Signed) ROSTROM, DUTTON & CO.

"A." "A."

I do hereby certify that this paper marked "A," is the same referred to in deposition of William Knight, esq.

(Signed) ROBT. G. SCOTT, Jr.,
U. S. Consul.

176 U. S. Dist. Court, east dist. of Louisiana.

Wallerstein, Massett & Co.
vs.
Barque "Grapeshot."
} No. 7,370

Account current B, referred to in and annexed to the deposition of William Knight for libellants.

[Copy.]

Barque "Grapeshot" and owners in ac. current and ins., *a* 11 per cent., to date, with Rostrom, Dutton & Co.

Dr.

1857.			
Oct. 31.	To bal. of ac. last voyage, Oct., '57	1808.780	5 15-91.200
1858.			
April 15.	To am't of b'k's disbursem'ts, less above item	20755.750	
	Cash paid Capt. Clark further	200.000	
	Insurance on *R.*1808.780, *a* 2 per cent.	36.180	
	Am't p'd further Amer. consul $270 8-100, at ex. 1.900 ...	51.750	
	Balance of interest	2.190	
			*Rs.*91.200
		*Rs.*22854.650	

"B."

177 Barque "Grapeshot" and owners in account current and ins., *a* 11 per cent., to date, with Rostrom, Dutton & Co.

Cr.

1858.				
Feb'y 16.	By nett pro'c'ds sales salt ex. "Grapeshot"	485.010	2 m.s.	89.010
April 15.	By am't of bottomry taken, *a* 19½ p. c. ex. 1 720	16800.000		
	Capt. Clark's draft on Rob't Howes, esq., $833 47c	1199.640		
	(Being for b'l'ce of acc. and on same terms as above bottomry bond)			2.190
	Balance of ins. to Dr			91.200
		22854.650		

E. O. E.
Rio de Janeiro, 15*th April*, 1858.
(Signed)
ROSTROM, DUTTON & CO.

I do hereby certify that this paper, marked B, is the one referred to by William Knight, esq., in his deposition,
(Signed)
ROB'T G. SCOTT, Jr.,
U. S. Consul.

178 U. S. District Court, eastern district of Louisiana.

Wallerstein, Masset & Co.
vs.
Barque "Grapeshot." } No. 7,370.

Account current "B," referred to in and annexed to the deposition of William Knight for libellants.

(Copy.)

Barque "Grapeshot" and owners in acc. current, and int. *a* 11 p.c. to date, with Rostrom, Dutton & Co.

Dr.

1857.				
Oct. 31st.	To balance of account last voyage, Oct., '57	1808.780	5 15-91.	200
1858.				
April 15th.	Am't of b'k's disbursem'ts less above item	20755.750		

April 15th.	Cash paid Capt. Clark further	200.000	
	Insurance on R1808.780, *a* 2 p. c	36.180	
	Am't p'd further, Amer. consul, $27 08-100, *a* ex. 1 900	51.750	
	Balance of interest	2.190	
		22854.640	R91.200

"B."

179 Barque "Grapeshot" and owners in account current, and int. at 11 p. c. to date, with Rostrom, Dutton & Co.

Cr.

1858.					
Feb. 16.	By	nett proc'ds sales salt ex. "Grapeshot,"	485.010	2 mos.	80.010
April 15.	By	am't of bottomry taken, *a* 19½ p. c., ex. 1 720	16800.000		
		Capt. Clark's draft on Rob't Hewes, esq., $833 47c	1199.640		
		(Being for bal'ce of acc. and on same terms as above bottomry bond.)			
		Balance of int. to Dr			2.190
					R91.200
			R22854.650		

E. & O. E.

Rio de Janeiro 15*th April*, 1858.

(Signed)

ROSTROM, DUTTON & CO.

"B."

I do hereby certify that this paper, marked "B," is the one referred to by William Knight, esq., in his deposition.

(Signed)

ROB'T G. SCOTT, Jr.,

U. S. Consul.

180 U. S. Dist. Court, east. dist. of Louisiana.

Wallerstein, Masset & Co.
vs. } No. 7,370.
Barque "Grapeshot."

Proposal to advance money.

Osabaixo assignado offeveen adia–utar a risco maritimo, a quantia de reis 1600.000 sobre o casco e frete da barca Norte Americana "Grapeshot," comdestino a New Orleans, do premia de disanere e meio por cento (19½) cambria de 1.720 reis por cada peso, effectuando se o pagamento dentro dos vinte dias depois de chegada de navia do porto de descarga.

Rio de Janeiro, 14 d Abril, d 1858.

(Signed)

WALLERSTEIN, MASSET & CO.

Accepted:

JOSEPH S. CLARK.

181 *Consul's certificate to above proposal for loan.*

Consul of the United States at Rio Janeiro.

I, the undersigned consul of the United States at Rio de Janeiro, do hereby certify the above to be a true and correct copy of the original in the Portuguese language on file at this consulate. I do further certify that no other proposals to advance money to said barque "Grapeshot" were received at this consulate.

Given under my hand and seal of office, this 6th day of September, A. D. 1858.

[L. S.] (Signed)

ROB'T G. SCOTT, Ju'r.

182 U. S. Dist. Court, east district of Louisiana.

Wallerstein, Masset & Co.
vs. } No. 7,370.
Barque "Grapeshot."

Port charges and disbursements of barque "Grapeshot" annexed to deposition of William Knight.

Port charges and disbursements of American barque "Grapeshot," Captain Clark, from Cape Verde to this port with salt, and hence to New Orleans with coffee.

To	officer reporting the vessel	4.
	Custom-house entry, as per regulation	10.
	Translation of Masset's, and copy	15.
	Conferring manifests and list of stores and taking out clearances from custom-house	10.
	Fees to officers of discharge and visit	80.

	To duties on extra stores	4.800
	Labor hire, discharging inward cargo	....
183	Labor hire, loading outward cargo	121.600
	Boat ac. for boat stowing	....
	Lighterage ac.	....
	Estiuador's ac	101.480
	Clearance at Consulado	10.
	Anchorage dues and port charges	172.800
	Consul's ac. for fees and advances, 100 00 *a* 900	190.000
	Cash advances—Capt., cash 2256, 58800, Mosand 204	58.800
	Desser, 220	2580.000
	Ship chandler's ac.:	
	Friextas, 86820; Hobbs .... 186760 163520 Esting,	437.100 2175.940
	Account for rating chronometer	11.
	Tow-boat cut, 60 and 80; mowing, 20	160.
	Doctor's ac. for medicine—C. A. Santos	28.200
	Butcher ac.	212.380
	Beef ac., Balohoni, 88, 176; Capt., close, 193, 130	369.130
	Advertis'g, 9828; bread ex. "Island Queen," 89820	99.640
	P'd mate, $64 50, *a* 2 ex	169.
	Carpenter's ac.—Hannah & McL. copperage, caulking, &c	13065.260
	Oct. 31.—31.	20046.130
	Old ac's left over from this date	1808.780
		21854.910
	Commission, *a* 2½ p. c. on 20.046 130	501150
		22356.060
	Com'r's ac. for 5 p. c. com., Bisson 3800, *a* 55, ex. 1, 900, and primage	208470.069
		22564.530

E. & O. E.
Rio de Janeiro, 15 *April*, 1858.
(Signed)

ROSTROM, DUTTON & CO.

184 *Consul's certificate to foregoing account annexed to deposition of William Knight.*

Consulate of the United States at Rio de Janeiro.

Personally appeared William Knight, esq., one of the firm of Rostrom, Dutton & Co., of this city, merchants, who, being duly sworn, deposes that the annexed account, by them subscribed, to be a true and genuine copy, taken from their original books, of all the disbursements, port charges, &c., of American barque "Grapeshot," Clark, master.

Given under my hand and seal of office this 6th day of September, 1858.

(Signed)

[SEAL.] ROB'T G. SCOTT, JR.,
United States Consul.

185 U. S. Dist. Court, eas'n. dist. of Louisiana.

WALLERSTEIN, MASSET & CO.
vs. } No. 7,370.
BARQUE "GRAPESHOT."

Account of Hannah & MacLennan

RIO DE JANEIRO, 12*th April*, 1858.

Barque "Grapeshot" & Owners, Dr.

To Harrah & MacLennan,
No. 108 Rua da Suade.

On hand pine and paroba masts, spruce-pine spars, and ship timber of all descriptions. Careful attention paid to all branches of the business. Blacksmith and blockmaking under our entire direction.

To	1 large plank parota timber	90.000
	2 oars, measuring 28 feet, *a* 360	10.080
	Hire of ten men warping in, *a* 3	30.000
	18 *a* oakum, *a* 5.500	99.000
186	815 grs. mina cotton, *a* 400	326.000
	4 bar'l best tar, *a* 21	84.000
	5 do pitch, *a* 23	115.000
	6 packets iron tacks, *a* 400	2.400
	907 sheets yellow metal, weight 6.281 sbe., *a* 700	4.496.700
	1,658 lbs. copper nails, *a* 640	1059.840
	1 stick parota for keel,	150.000
	5 planks parota graving pieces, *a* 85	425.000
	15 pine boards, various uses, *a* 2.500	37.500
	3 hard wood boards, *a* 12	36.000
	6 med. oil, for Galagala, *a* 1.400	8.400
	6 alg. lime, do *a* 500	3.000
	7 lbs. sheet lead, *a* 320	2.240
	2 packets copper tacks, *a* 1.800	3.600
	50 lbs putty, *a* 160	8.000
	100 lbs. iron nails, various, *a* 160	16.000
	50 men heaving ship out, *a* 3	150.000
	9 men warping out, *a* 3	27.000
		7079.760

Hire of riggers.

To	1 foreman rigger, careening, 8 days, *a* 8	64.000
	Rigger men, careening, making 20 days, *a* 6	120.000
	1 foreman rigger, not careening, making 102 days, *a* 6	63.000
	Rigger men, not careening, making 28 days, *a* 4	112.000

187 *Hire of carpenters.*

To	journeymen careening, making 102 days, *a* 8	816.000
	Blacks " " 45 " *a* 4.500	202.500
	Journeymen not careening, making, 80 days, *a* 5	400.000
	Blacks " " " 38 " *a* 3	114.000

Hire of careening tackle.

To	1 careening hulk, 16 days, *a* 12	192.000
	2 large purchases for heaving out, 11 days, *a* 10 each	220.000
	1 purchase used in steading ship, 11 days, *a* 6	66.000
	4 large chain shrouds, 17 days, *a* 2 each	136.000
	8 large blocks for do., 17 days, *a* 2	272.000
	4 rope lanyards, 17 days, *a* 2	136.000
	4 rope lashings for blocks, 17 days, *a* 1	68.000
	12 chain do. do. 17 days, *a* 1	204.000
	2 spars for shears to mast, 17 days, a 4	136.000
	3 tackles used on board with riggers, 17 days, *a* 3,	153.000
	2 chain and 2 rope strops, 17 days, *a* 2 all	34.000
	2 planks, paroba cut up for steps of shores, wedges, &c., *a* 30	60.000
	4 small spars, cut up for shores to heels of masts, houses, &c., *a* 28	112.000
		10760.260

188 *Account of caulking.*

To	1 master caulker	150.000
	White caulkers careening, making 39 days, *a* 8.000	312.000
	White caulkers not careening, making 68 days, *a* 5	340.000
	Black caulkers careening, making 130 days, *a* 4.500	585.000
	Floating stages, making 60 days, *a* 2	120.000
	Black caulkers not careening, making 58 days, *a* 3	174.000
	8 pitch mops, *a* 2	16.000
	1 pitch launch and kettle, 15 days, *a* 4	60.000

To hire of two launches, 18 days, *a* 6	108000
1 pump, 5 days, *a* 4	20.000
Administration of Harrah & McLennan	420.000
	13.065.260

Recived the above thirteen thousand sixty-five mill, two hundred sixty reis, (13.065 260,) in full.

Rio de Janeiro, 15th April, 1858.

(Signed)

HARRAH & McLENNAN.

189 *U. S. Consul's certificate to above account of Harrah & Ma Lennan.*

CONSUL OF THE UNITED STATES, *at Rio Janeiro.*

I, the undersigned consul of the U. States, at Rio de Janeiro, do hereby certify the foregoing signatures, of Harrah and Mac Lennan, of this city, to be true and genuine, and as such worthy of just faith and credit.

Given under my hand and seal of office this 6th day of September, A. D. 1858.

[SEAL.] (Signed) ROB'T G. SCOTT, JR.

U. S. District Court east district of Louisiana.

Account of Esling and Alvarengas.

WALLERSTEIN MASSET & CO.
vs.
BARQUE "GRAPESHOT." } No. 7,370.

190 RIO DE JANEIRO, 1858.

Barque Grapeshot, (Capt. Clark.)

Bought of Esling & Alvarengas.
No. 7, Rua Fresca:

1858.		
Jan'y 5.	1 boat hire	1.000
6.	6 lbs. cut nails, 240	1.440
	1 straw hat, carpenter	800
	1 straw hat, 2d mate	5.000
7.	500 sticks wood	14.500
8.	1 straw hat, cook	3.000
	1 lbs. metal brads	2.500
	1 straw hat, filnyn	1.800
	2 brass hooks	640
	6 nutmegs	360

	Jan.	8.	1 bath brick	240
			1 lb. saleratus	800
			1 bott copal varnish	2.400
		9.	1 boat hire	2.000
		11.	1 bolt cotton canvas No. 6 106 ½ y'ds, 900	95.880
			1 coil 4 inch Manilla 464 lbs., 440	213.840
			6 gall. boiled oil, 3	18.000
		13.	3 shirts, steward	2.800
			1 pair pants	1.400
191			1 boat hire	2.000
		16.	1 hamper potatoes	5.500
			2 gallons boiled oil, 3	6.000
		18.	1 boat hire	3.000
		19.	25 lbs. brown sugar, 180	4.500
			5 pipes water, 1.200	6.000
		22.	25 lbs. ref'd sugar, 200	6.000
			1 boat hire	2.000
		23	200 nails, 700	1.400
		25.	1 hamper potatoes	5.500
		26.	10 lbs. brown sugar, 180	1.800
		27.	1 pair slippers, steward	1.100
			1½ lbs. soap, Anderson	600
		28.	1 bl. beef	42.000
			1 hamper potatoes	5.500
		29.	1 pair slippers, Anderson	1.200
			1 straw hat "	1.200
			2 woolen shirts, Myor, 4	8.000
		30.	2 coil 2½ inch Manilla, 367 lbs, 440	161.480
			84 lbs. hemp rope, 360	30.240
			1 side rigging, leather	8.000
			1 tin pot, J. E. Ellis	320
			1 straw hat "	800
			2 woolen shirts, Carver, 2.500	5.000
			2 woolen shirts, Carver, 1.500	3.000
			2 pair shoes, Carver, 4	8.000
			2 pair pants, Carver, 200	2.400
			2 pair pants, Carver	2.400
	Feby.	1.	1 bbl. pork	60.000
			Duty on pork	3.260
192			12 lbs. verdigris, 1	12.000
			500 sticks wood	14.500
			2 galls. sperm oil, 4	8.000
			40 lbs. spurn yarn, 480	19.200
			64 lbs. bolting stuff, 480	30.720
			73 lbs. Manilla, 400	32.120
			4 lbs. lamp black, 200	960
			1 boat hire	2.000
		2.	1 hamper potatoes	5.500
			¼ lbs. spices	1.000
			1 lb. soda	1.200

Feb.	3.	1 boat hire	1.000
		2 pipes water, 4.200	2.400
		25 lbs. brown sugar,, 180	4.500
		15 lbs. ref'd sugar, 220	3.300
	4.	1 boat hire	1.000
	6.	12 pipes water, 1.200	14.400
		Cash paid laborers	17.500
		Cash paid mate	5.000
	8.	4½ pipes water, 1.200	5.400
		1 lb. black tea	2.400
		3 lbs. butter, 1	3.000
		1 hamper potatoes	5.500
		5 gallons tar, 800	4.000
		5 gallons bright varnish, 1.600	8.000
		1 boat hire	1.000
	9.	Medicine	5.000
193		Repairing tinware	3.600
		1 straw hat, steward	6.000
		Clothing	113.000
		1 6-in. double block	2.400
	12.	1 bottle castor oil	2.000
		Medicine	4.440
		15 lbs. rice, 130	1.950
	15.	1 dozen pipes, Ellis	.480
	16.	Medicine	1.640
	17.	5 gallons boiled oil, 3	15.000
		5 lbs. ref'r sugar, 220	1.100
		50 lbs. brown sugar, 180	9.000
	20.	1 boat hire	1.000
March	1.	500 sticks wood	14.500
		2 bells	36.000
		64 lbs. putty, 200	12.800
		32 lbs. oakum, 120	3.800
	10.	Medicine	1.200
	15.	3 barrels pitch, 12	36.600
		Boat hire	2.000
	18.	1 boat hire	2.000
	20.	1 boat hire	2.000
	25.	3 gallons boiled oil, 3	9.000
		2 gallons sweet oil, 3.500	7.000
	26.	10 lbs. ref'd sugar, 220	2.200
		Cash paid, pigs	8.000
		1 boat hire	1.000
		1 hamper potatoes	5.500
194	30.	1 dozen fowls	18.000
	31.	1 boat hire	1.000
April	3.	1 boat hire	3.000
	5.	1,500 sticks wood, 29	44.000
		Duty on do	2.400
		1 boat hire	2.000

April 6.	1 bag corn	8.120
7.	2 lbs Hynson tea, 2 500	5.000
	3 lbs. black tea, 2.400	7.200
	15 lbs. butter, 1.280	19.200
	6 lbs. verdigris, 1	6.000
	17 lbs. spurn yarn, 480	8.160
	500 sticks firewood, 40	20.000
	1,000 sticks firewood, 40	40.000
	600 mats, 9	54.000
	Duty on wood and maps	8.600
	Boat hire	2.000
9.	Fubua hire, with wood and mats	6.000
	Boat hire	2.000
10.	Boat hire	2.000
	Boat hire	2.000
12.	Hospital fees, 2d mate	16.800
	40 gallons molasses, 1	40.000
	20 lbs. butter, 1	20.000
	½ lb. ground pepper	320
	6 nutmegs, 60	360
	2½ lbs. saleratus, 800	2.000
	1 lb. soda	1.500
	½ box raisins	4.900
195	5 gall's sweet oil, 3.500	17.500
	1 ball lamp wick	480
	19¼ lbs. soap, 200	2.850
	6 dozen matches, 480	2.880
	4 white mugs, 200	800
	5 gallons vinegar, 900	4.500
	6 knives and forks	2.800
	2 deep plates	3.600
	6 soup spoons	1.440
	30 lbs. spurn yarn, 480	14.400
	8 lbs. hemp twine, 800	6.400
	10 lbs. cut nails, 240	2.400
	12 hanks	2.000
	40 lbs. rattling stuff, 400	17.600
	41 lbs. ham, 560	22.960
	3 doz. fowls, 16	48.000
	12 doz. eggs, 1	12.000
	½ bbl. mackral	13.000
	100 lbs. brown sugar, 180	18.000
	4 gall's sp'rm oil, 4	16.000
	5 lbs. cotton twine, 1.200	6.000
	½ bushel white beans	3.400
	1 can zinc paint, 25 lbs., 300	7.500
	10 pipes water, 1.200	12.000
	Duties on stores	2.500
13th.	1 bushell corn	3.200
	1 boat hire	2.000

April 13.	1 bath brick	240
14.	60 lbs. codfish, 200	....
	60 lbs. rice, 130	8.320
	8 lbs. tobacco, Myor, 1.600	13.800
	2 straw hats, Myor, 800	1.600
	2 doz. matches, 480	960
	1 pair pants	1.500
	1 woolen singlet	3.500
	2 dozen pipes, 480	960
	1,000 sticks pine wood, 60	40.000
	Duty on wood	3.000
	Boat hire	2.000
	50 lbs. ref'd sugar, 220	11.000
	93 lbs. hemp rope, 380	35.300
	1 bbl. pork	60.000
	1 keg lard, 23 lbs., 400	9.200
	1 bolt hemp canvass	28.000
	1 coil $2\frac{3}{4}$-in. Manilla, 180 lbs., 440	79.200
		Rs. 2,175.940

Received payment.
(Signed) ESLING & ALVARENGAS,
RIO DE JANEIRO, 16*th April*, 1858.

197 *Consul's certificate to Esling and Alvarengas account.*

CONSULATE OF THE UNITED STATES,
At Rio de Janeiro.

I, the undersigned consul of the United States at Rio de Janeiro, do hereby certify the above signature of Esling & Alvarengas, of this city, to be true and genuine, and as such worthy of full faith and credit.

Given under my hand and the seal of this office this 6th day September, 1858.

[SEAL.] (Signed) ROBERT G. SCOTT, JR.,

U. S. District Court eastern district of Louisiana.

Deposition of Geo. Nathan for libellants, taken in court December 13*th*, 1859, *and filed in evidence.*

WALLERSTEIN, MASSET & CO.
vs. } No. 7,370.
BARQUE "GRAPESHOT."

198 George Nathan, for libellant, having been duly sworn, deposes: I am a merchant in this city, and engaged in trade with Rio; have been for 13 years; formerly resided in Rio de Janeiro for eight years; was engaged in commercial pursuits there. I knew the

house of Rostron, Dutton & Co.; was intimately acquainted with commercial standing and reputation, it was of the highest kind; their general character for truth and integrity was as good as that of any other house.

Cross-examined.

In the spring of 1858, Mr. Thos. Dutton and Wm. Wright were the resident partners of the house. Mr. Rooker, also a partner, was in the United States. I know the standing of Maxwell, Wright & Co. In the winter and spring of 1858 their commercial standing was good. They were not doing the leading business then; but they were doing a very large business with the United States.

(Signed) GEORGE NATHAN.
(Signed) ROBT. M. LUSHER,
U. S. Comm'r.

199 U. S. Dist. Court east. dist. of Louisiana.

Deposition of P. A. Giraud, taken in court Dec'r 13, 1859, *offered and filed in evidence for libellants.*

WALLERSTEIN, MASSET & CO.
vs. No. 7,370.
BARQUE "GRAPESHOT."

P. A. Giraud, for libellants, having been duly sworn, deposes: I have been engaged since 1831 in commerce, in New Orleans. For 8 or 10 years have had commercial business with Rio; within a few years a very large business. I am acquainted intimately with the firm of Rostrom, Dutton & Co.; they are our correspondents. They are doing a very large business, and have very large transactions with the United States. They are looked upon as men of integrity, and their standing is very high at home and abroad.

200 *Cross-examined.*

The parent house is in Manchester, Eng'd. I presume they have been established in Rio, Bahia, and Pernambuco many years. In the winter and spring of 1858, Mr. Knight was in Rio. I know he resided there with Mr. Rooker, or Mr. Dutton, alternately. Maxwell, Wright & Co. had a large business with the United States in 1858; their standing was good.

(Signed) P. A. GIRAUD.
(Signed) ROBT. M. LUSHER,
U. S. Comm'r.

Close of evidence for libellant.

N. B.—For evidence offered by or on behalf of claimant, see vol. II, of this transcript of the record, pages 131, '2, '3, and '4, herein will have shown the names of the witnesses, &c., on both sides.

May 25th, 1860.

ROBT. M. LUSHER,
D'y Cl'k U. S. Dist. Court.

201 U. S. District Court eastern district of La., in admiralty

Final decree.

WALLEESTEIN, MASSET & CO.,
vs.
BARK GRAPESHOT AND FREIGHT, GEORGE LAW, of New York, claimant.
} 7,370.

By his honor Theo. H. McCaleb, judge, ren'd 31 Jan'y, 1860:

The libellants, who are subjects of the Empire of Brazil, and reside in Rio de Janeiro, allege that, in the month of April, 1858, the bark "Grapeshot," then lying in the port of Rio, was in great need of reparations, provisions, and other necessaries, to render her fit and capable of proceeding thence on her intended voyage to this port, and Joseph S. Clark, the master of said bark, not then having any funds or credit there, the owners of the said bark not residing in Rio, and having no funds or credit there, they, (the libellants,) did, at the request of the said Joseph S. Clark, the master, advance 202 and lend to him, the said Joseph S. Clark, the sum of $9,767 45, on the bottomry and hypothecation of the bark, on the adventure and risk thereof, and at the rate of 19½ per centum maritime interest, for the repairing and victualling, and manning of the same, in order to enable her to proceed thence to the port of New Orleans; and the said Clark did really and truly expend the said sum for the purposes aforesaid; and the bark could not possiby have proceeded with safety on her voyage without such repairs, and other necessary expenses attending the refitting her for the voyage aforesaid.

The libellants further allege, that on the 15th of April, 1858, the master of the bark, in pursuance of the agreement of bottomry and hypothecation, in order to secure the repayment of the sum of $9,767 45-100, so advanced by them, and also the payment of $1,904 65-100, the amount of the maritime interest according to the rate mentioned, did, on behalf of himself and the owners of the bark, execute a certain bottomry or hypothecation bond, whereby, 203 among other things, he bound himself and [and] the said bark, with her freight, tackle, apparel, and furniture, to pay to them (libellants) the sum mentioned in the bond, at or before the expiration of twenty days after the arrival of the bark at this port.

It is further alleged that the bark sailed on her voyage, and arrived safe at this port and delivered her cargo, and that after the expiration of twenty days from her arrival, the bond was, on behalf of the libellants, tendered for payment by Theodore Briene, to whom it had been transferred by the libellants for collection, to the master of the bark, but that he refused, and still refuses, to pay it, to the damage of the libellants in the sum of $1,200, and it may be more.

It is further alleged that the cargo of the bark was consigned to Negroponte and Angelusto, merchants of this city, who have received the same, and now owe the freight thereon, amounting to $2,055, which is hypothecated to the libellants, and which the consignees

should be required to deposite in the registry of the court, to
204 await the result of this suit.

The claimant and respondent, in the long answer which he has filed to the libel, strenuously resist the payment of the bottomry bond, upon various grounds. I deem it unnecessary to notice them all in detail, and shall, therefore, specify such only as I consider important in presenting my opinion upon the real merits of the controversy.

The respondent first alleges that the libellants have failed to present a proper statement, showing the necessity of having repairs done upon, and supplies furnished to, the bark, and charges that the advances, if ever made, were so made in fraud of his rights, and in order, by a fraudulent collusion with the master of the bark and other persons, to obtain a bottomry security for sums which were not necessary, and ought never to have been required to put the bark in a situation to perform her intended voyage. He further alleges that the libellants were fully cognizant of the fact that the master of the bark could easily have procured such sums as he really required
205 for repairs and supplies on his (respondent's) credit, from
Maxwell, Wright & Co., in Rio, and that, therefore, the said master had no right to resort to a bottomry bond. He further alleges that the master had in his hands large sums of money, which he had realized from various cargoes of salt which he had sold in Rio, on his own account, and had, therefore, no right to resort to a bottomry bond.

I have examined with great care the evidence introduced on the the trial of the cause, and shall now proceed to give, as briefly as possible, rather the conclusions at which my mind has arrived than the reasons at length, or in detail, and upon which those conclusions are founded.

The great responsibility which the laws of commercial nations cast upon the owners of vessels for the acts of the masters has appeared to many persons, at first view, to be a great hardship, but, laying aside all consideration of the opportunities of fraud and collusion, which would otherwise be afforded, it should always be remembered that the master is elected and appointed by the
206 owners, and by their appointment of him to a place of trust
and confidence they hold him forth to the public as a person worthy of trust and confidence, and if the merchant whom he deceives could not have redress against those who appointed him, they would often have just reason to complain that they had sustained an irreparable injury through the negligence or mistake of the owners, as the master is seldom of ability to make good a loss of any considerable amount. And it is a well settled general rule of law that the owners are not only liable for the contracts of the master, but also for his torts when done within the scope of his employment. (Abbott on shipping, 165, 166, and notes.)

The law, in respect to maritime hypothecation, is, in general, well settled. The master of the ship is the confidential agent and servant of the owners, and they are bound to the performance of all lawful contracts made by him, relative to the usual employment of

the ship and the repairs, and other necessaries furnished for her use. The rule is established, as well upon the implied assent of the owners, as with a view to the convenience of the commercial
207 world, as, therefore, the master may contract for repairs and
supplies and thereby indirectly bind the owners to the value of the ship and freight; so it is held, that he may, for the like purposes, expressly pledge and hypothecate the ship and freight and thereby create a direct lien on the same for the security of the creditor. But the authority of the master is limited to objects connected with the voyage, and if he transcend the prescribed limits his acts become, in the contemplation of the law, mere nullities. Hence, to make a bottomry bond executed by the master a valid hypothecation of the ship, it must be shown by the creditor that the master acted within the scope of his authority; or, in other words, it must be shown that the advances were made for repairs and supplies necessary for effectuating the objects of the voyage, or the safety and security of the ship; and no presumption should arise that such repairs and supplies could be procured upon any reasonable terms with the credit of the owner, independent of such hypothecation.
If, therefore, the master have sufficient funds of the owner
208 within his control, or can procure them upon the general
credit of the owner, he is not at liberty to subject the ship to the expensive and disadvantageous lien of an hypothecatory instrument. It is incumbent upon the creditor, who claims an hypothecation, to prove the actual necessity of those things which give rise to his demand. (The Aurora 1; Wheaton 102, 506.) The principles here ennuciated are to be found in all the leading elementary treatises and authorities as incontrovertibly established. (3 Kent's lecture; 46 Abbott on shipping; 125 Amer. ed. of 1829; the Virgin, 8 Peters, The Nelson; 1 Hagg. 169, 175.)

It may now be considered as settled, beyond controversy, that where money is advanced in a foreign port for necessary repairs, the owner is liable for the amount advanced for such repairs in a suit in personam at the instance of the lender. And if the work is done and materials furnished for such necessary repairs in a foreign port, the material, men, and workmen, if unpaid, have a treble remedy by a suit in personam against the master and owner, and by a suit
209 in rem, in the admiralty to enforce the lien given to them by
the maritime law. Mr. Justice Story, after noticing this well-established principal, says: "This enquiry is the more important, because if the repairs made were, in the sense of the law, necessary repairs, for which the owner would have been personally liable if no bottomry bond had been taken, then it seems to me, that if the necessary funds in order to make those repairs could not otherwise be obtained, and the bottomry bond was bona fide, entered into by the lender, it would be extremely difficult to show that it ought not to be upheld by this court." (The Fortitude, 3 Sumner, 236.)

In relation to what are necessary repairs, in the sense of the law, for which the master may lawfully bind the owner of the ship, the same learned and indefatigable jurist said, in the same opinion to

which I have just referred, "I have not been able, after a pretty thorough search into the authorities and text writers, ancient and modern, to find it anywhere laid down in direct or peremptory terms
that they are such repairs, and such repairs only, as are abso-
210 lutely indespensable for the safety of the ship or the voyage;
that there must be an extreme necessity, an invicible distress, or a positive urgent incapacity, to justify the master in making the repairs. The general formulary of expression found to be laid down is simply that the repairs are to be necessary, without in any manner pointing out what repairs are, in the sense of the maritime law, deemed necessary, or what constitutes the true definition of necessity. But a thorough examination of the text writers, ancient as well as modern, will, as I think, satisfactorily show that they have all understood the language in a very mitigated sense, and that necessary repairs mean such as are reasonably fit and proper for the ship under the circumstances, and not merely such as are absolutely indispensable for the safety of the ship or the accomplishment of the voyage.

The Roman law manifestly took this view of the matter. In commenting upon the Pretors edict, De exercitoria actione, it is well remarked by Ulpian, that as we are obliged from necessity to con-
tract with masters of ships, of whose character and condition
211 we are ignorant, it is equitable that the owner should be bound
by his acts. And that the case is stronger than that of a contract with the clerk of a shopkeeper, for sometimes in the case of the master of a ship, neither the time, nor the place allow us the full opportunity of deliberation In Navis Mngistro, non ita est nom interdum locus, tempus non patitur plenins deliberandi concilium." (3 Sumner; 237 Dig. Lib. 14 tit. 1.)

The French ordinance of 1681 declares that the master may, in the course of the voyage, take up money upon the body and keel of the ship for the repairs, provisions and necessities of the ship. In the interpritation of this ordinance, it has been held by the ablest commentators, Valio and Emerigen, that at most, nothing more than an apparent necessity and good faith on the part of the lender are necessary to make a bottomry by the master valid for repairs; indeed it seems that if the lender act in good faith upon the representations of the master, the bottomry will be valid, even if no neces-
sity for the repairs really existed. (Merigen, Traite a la Grosse,
212 tom. 2, ch. 4, s 5, 7, 8, 11; 1 Valin comm. Liv. 2. tit., art. 19,
p. 441.) In Wester *vs.* Leekamp, (4 Barn A Ald., 352,) Mr. Justice Best said "no man can say what is absolutely necessary. If the topmast were lost, a vessel might sail without them, and possibly perform her voyage in safety. A topmast might therefore be said not to be absolutely necessary; yet no prudent man would proceed to sea without it. Chancellor Kent, in his commentaries, says: The supplies must appear to be reasonable, or the money advanced for the purpose of them to have been wanting, and there must be nothing in the case to repel the ordinary presumption that the master acted under the authority of the owners." "And such," says Judge Story,

"'I conceive to be the established doctrine of the American law. All the analogies of the law lead to the same conclusion." (3 Kent Let. 46, p. 163, 3rd ed., 3 Sumner, 247.) Let us, now, apply these principles of the maritime law to the case under consideration; and in order to do so properly, we shall first examine the evidence adduced
by the libellants in support of this bond. Several witnesses
213 have been examined, under a commission from this court, in
Rio Janeiro, and among them is the master of the vessel. His testimony has been strongly objected to by the proctor of the claimant, and his conduct in reference to his general management of the bark, and especially in reference to his mode of proceeding, in obtaining the loan on bottomry, boldly and violently assailed. I am aware that the testimony of the master, in the case of the **Fortitude**, was rejected by Mr. Justice Story on the ground of interest; but in doing so, he acknowledged that he was not confident that his opinion rested upon grounds so clear that he ought not to yield to a settled course of practice; and he also expressed his fear that there was no authority which directly sustained it. The ground upon which he proceeded in ruling out the deposition, was that although as a mere agent the master might not be an incompetent witness in an ordinary suit against the owner personally; yet, in a proceeding in rem upon the bond, the decree in favor of the libellant would necessarily be conclu-
sive as to the fact of the necessity of the repairs, or at least
214 prima facie evidence in any suit subsequently brought against
the master for his supposed misconduct, since the owner must
produce the decree of the substratum of his case. The learned judge, however, admited that his decision was certainly with much difficulty reconciliable with the common law decisions on the same point, and especially with the case of Evans *vs.* Williams (7 S. Rep. 481;) Rocker *vs.* Busher, (1 Starkie R. 27,) and Milward *vs.* Hallet, (2 Caines, R. 77.) "I am by no means sure," he says, "that I was right in the rejection of the deposition. My subsequent researches have not enabled me to feel more confident in it; and in every case which I have since examined in the Supreme Court of the United States, and in the high court of admiralty, in England, I find the master's testimony has been admitted without objection, and commented on as evidence, or else adverted to as proper evidence, when it happened to be absent, even when the point of the necessity of the repairs was directly before the court. I find, too, that Mr. Bell
(1 Bell's comm., B. III, p. 1, ch. 5, s. 1, note 456.) asserts that
215 the master is held a competent witness to establish the neces-
sity of the supplies for the ship.

With the strong arrays of authorities here presented in favor of receiving the testimony of the master, I do not feel myself at liberty to exclude it. Like every other agent, he is doubtless interested in testifying strongly in justification of his own conduct in a case like this; but his interest is such as would rather go to the effect of his evidence than authorise its absolute rejection.

This witness testifies that the bark arrived in Rio from the Cape de Verd islands consigned to Rostrom, Dutton & Co., and that she leaked very badly during the entire voyage to the Cape de Verdes and back, more particularly on her return with cargo; that during said voyage she wasted over 9,000 bushels of salt by the water washing over the skin and dunnage. He further testifies that the account dated Rio, 15th of April, 1858, and signed by Rostron, Dutton & Co., showing the port charges and disbursements of the bark is correct, and that the sums therein stated were really paid for and on 216 behalf of the bark in order to defray her expenses; that he advertised in a public gazette published in Rio for a loan on bottomry, in order to pay off the bark's expenses and repairs in the port of Rio, and annexed to his answers to the interrogatories the advertisements themselves in the English and Portuguese languages. He testifies to the correctness of the charges of Rostron, Dutton & Co., who paid the demands of various persons against the bark, and to whom the amount realised from the loan of the libellants on the bottomry bond was paid over. The testimony of this witness is substantially coroborated by that of the shipwright who made the repairs, and the ship chandler who furnished the supplies to the bark, and by that of Rostron, Dutton & Co. One of the members of this firm who was examined under the commission which issued from this court, testifies to the necessities of the loan to pay the accounts of the bark, and the shipwright who examined her when the repairs were about to be made upon her testifies that she leaked very badly; that he greased and hove her out, stopped her, and repaired her false 217 keel, put on many graving pieces, many new caulked her from keel to plank sheer, re-sheathed and re-metaled her with much heavier metal than she had before; that he found many sheets of copper off her bottom, and many worn through, and, in consequence of which, the vessel was in many places wormed; the copper that came off her was entirely worn out, and one-fourth part of it a regular honeycomb.

The witness Knight, of the firm of Rostron, Dutton & Co , states that his firm received the amount of the loan on the bond from Wallerstein, Masset & Co.; that the amount was found to be insufficient, and that the master, Captain Clark, was obliged to give his firm a a draft for the balance due on Robert Howes of this city. This balance amounted to the sum of $833 47, as appears by the draft itself introduced in evidence.

It is proper here to remark that ample and satisfactory testimony has been given by witnesses of the highest respectability in 218 this city of the high standing of the firm of Rostron, Dutton & Co., and of that of the libellants, Wallerstein, Masset & Co., in Rio. It is also proper to remark that the respondent and claimant has examined no witnesses in Rio to sustain his often repeated allegations of fraud and collusion. He has also failed to show that as the owner of the bark he had the credit necessary to enable the master to raise the money required without a resort to bottomry. The burden of proof was upon him to show this important fact. The ex parte deposition of John Graham of Connecticut has been offered for this purpose. The court, looking to the strict justice which should guide in all cases, must ever receive with reluctance all evidence

taken de bene esse. The opposite party has no opportunity to cross-examine the witness, and, in the present case, no reason is given why the testimony of this witness was taken in this ex parte manner. But the deposition, even if it could be legally admitted, is entitled to little weight. The witness speaks of the credit of the respondent in
219 Rio ten years ago; as it was good then, he concludes that it is
good now, and he knows that Maxwell, Wright & Co., of Rio, would advance any amount that was necessary to repair any of the respondent's ships. But how does he know it? Surely the confident language of the witness is alone calculated to deprive it of all the respect to which it might otherwise be entitled, and certainly this court is not inclined to take implicitly the mere assertion of the witness, unaccompanied by any reason for his conclusion. It is not shown that Captain Clark, the master of this bark, was aware of the high credit of his owner with the house of Maxwell, Wright & Co. The house was doubtless well disposed to oblige the respondent ten years ago, while they were acting, according to the statement of Graham, as the agents of his ships, but it by no means follows that now, when that agency no longer continues the same, alacrity and zeal in his behalf would be so readily displayed.

The court must pass over very briefly the testimony of the young mariners examined in New York to sustain the charges of fraud against the master and the lenders on the bottomry bond. It
220 is certainly expecting too much from the credulity of this court
to suppose that the testimony of these young men, with the ignorance and inexperience common to their class and calling, for two of them were seamen before the mast, and were between 21 and 22 years of age, will be received to sustain the solemn and serious charge of fraud in connection with transactions of which their knowledge must necessarily be limited. One of the three had been the second mate of the bark ~~and was~~ 25 years of age; all of them were employed on the bark at Rio at the time the repairs were made and the bottomry bond given by the master. They have not only stated with great confidence their opinion that the repairs and supplies were unnecessary, but also that the charges therefore were extravagantly high.

They not only cast the strongest suspicions upon the acts of the master, but boldly declared their belief that the libellants had a full knowledge of his fraudulent designs when they made the advances upon the bottomry bond.

221 It is quite absurd to suppose that such testimony can be
received to impair, much less to overthrow, the positive evidence of intelligent witnesses in Rio, who were personally cognizant of the facts to which they testify. We might safely admit the charges against the master of the bark, and yet, look in vain for one word of evidence which would justify this court in presuming fraud against the libellants. There is no ground whatever to doubt their good faith, and, without commenting further upon the testimony, I declare my full conviction that this bond is perfectly valid and should be upheld and enforced.

U. S. District , eastern district of Louisiana, November term 1859 and 1860.

Decree.

WALLERSTEIN, MASSET & Co.
vs.
BARQUE "GRAPESHOT," &c., GEO. LAW, claimant.

TUESDAY. *Jan'y 31st,* 1860.

Court having met, pres., Hon. Theo. H. McCaleb.

222 The court having examined and considered this case, doth now, for reasons rendered in writing, order, adjudge, and decree that the libellants recover of and from the claimant the full amount claimed in their libel, with special lien and privilege on the proceeds of the bark "Grapeshot," and her freight deposited in the registry.

U. S. District Court, east. district of Louisiana.

Rule for rehearing.

WALLERSTEIN, MASSET & Co.
vs. No. 7,370.
BARQUE "GRAPESHOT," &c.

FRIDAY, *February 3d,* 1860.

Court met at 10. a. m. Pres., Hon. Theo. H. McCabe.

On motion of Bouford, Singleton, and Clack, proctors for claimant and respondent, and on giving the court to understand and be 223 informed that there is error in the decree herein rendered on the 31st day of January last, it is ordered that libellants show cause on Saturday, February 11th, at 10 a. m., why a rehearing should not be granted of this cause, on the following grounds:

1st. That the testimony in this case does not warrant a decree in favor of libellant.

2d. That there was no necessity such as is contemplated by the law for the execution of a bottomry bond herein.

3d. That the court erred in admitting the testimony of the master, J. S. Clark.

4th. That the entire testimony shows no necessity for the execution of a bottomry bond herein.

5th. That, even admitting that the decree in favor of libellants be correct, which is denied, there are many items of the accounts filed by libellants in support of their bond, not properly subjects for a bottomry bond, and that from these accounts it is impossible to arrive at what items formed the subject of the bond.

224 6th. That there is nothing in the testimony by which a correct estimate of the amounts contemplated by law as subjects of a bottomry bond can be ascertained.

7th. That the decree gives no data by which the amounts to be allowed libellants can be arrived at.

U. S. District Court, eastern district of Louisiana.

Submission of rule for rehearing.

WALLERSTEIN, MASSET & Co.
vs. No. 7,370.
BARQUE "GRAPESHOT," &c.

SATURDAY, *Feb'y* 11*th*, 1860.

Court met at 10, a. m. Pres., Hon. Theo. H. McCaleb.

Claimant's rule for rehearing of this cause was this day argued at length by F. H. Clack, esq., in support thereof, and by Thos. J. Durant, esq., in opposition thereto, when the court took time to consider.

225 U. S. Dis. Court, east. dist. of Louisiana.

Refusal of rehearing and final decree.

WALLERSTEIN, MASSET & Co.
vs. No. 7,370.
BARQUE "GRAPESHOT," &c.

MONDAY, *Feb'y* 27*th*, 1860.

Court met at 10, a. m. Pres., Hon. Theo. H. McCaleb.

The court having carefully re-examined and considered this case, as prayed by the claimant, and being satisfied that there is no error in the judgment heretofore pronounced in favor of libellants, and that they are entitled to recover the full amount of the bottomry bond, on which their suit is brought, together with interest and costs, it is now ordered that the application for a rehearing be discharged.

And now, considering the law and the evidence of record, it
226 is ordered, adjudged, and decreed, that in favor of Wallerstein,
Masset & Co., libellants, there be judgment against the proceeds of the barque "Grapeshot," and the freight earned on her last voyage from Rio Janeiro to New Orleans, and deposited in the registry, for the full sum of $9,767 45, the am't of the bond afors'd, together with 19½ per ct. int., 1,904 65, making a sum total due 27th Jan'y, 1858, ($11,672 10,) eleven thousand six hundred and seventy-two dollars and ten cents, together with legal interest thereon, at the rate of five per cent. per annum from judicial demand, viz, from the 3d day of July, A. D., 1858, until paid, and costs of suit to be taxed by the clerk, and that the libellants have a special lien and privilege on said proceeds for the satisfaction of this decree.

227 U. S. Dist. Court, eastern district of Louisiana.

Appeal.

WALLERSTEIN, MASSET & Co.
vs.
BARQUE "GRAPESHOT," PROCEEDS AND freight. } No. 7,370.

THURSDAY, *March 1st,* 1860.

Court having met, pres., Hon'l Theo. H. McCaleb.

On motion of Messrs, Bouford, Singleton, and Clack for claimant, suggesting that said claimant is aggrieved by the final decree herein rendered on the 27th ult., and desires to appeal therefrom; and on their further suggesting that the proceeds, against which said decree was pronounced, are in the registry of this court, and on the court's authorizing; therefore, that supersedeas be granted on said claimants furnishing a bond in the sum $500 00; and the claimant, having accordingly furnished such a bond, conditioned as the laws directs, with G. A. Fosdick as surety, and approved by the court,
228 it is ordered that from said final decree said claimant be allowed a suspensive appeal, returnable to the next term of the U. S. Circuit Court, to be holden within this district.

District Court of the United States, in admiralty.

Appeal Bond.

United States of America, east. dist. of Louisiana.

WALLERSTEIN, MASSET & Co.
vs.
BARQUE "GRAPESHOT" AND PROCEEDS, AND Geo. Law, claimant. }

Know all men by these presents, that we, George Law, of New York, as principal, and G. A. Fosdick, as surety, are held and firmly bound unto the above-named Wallerstein, Masset & Co., libellants, in the sum of five hundred dollars, to be paid to the said Wallerstein, Masset & Co., for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans the first
229 day of March, in the year one thousand eight hundred and sixty.

Whereas the above-named Geo. Law, claimant of the proceeds of the barque "Grapeshot," &c., has appealed to the next term of the Circuit Court of the United States for the fifth circuit and eastern district of La. from a final decree of the District Court of the U. S for said dist., rendered on the 27th day of February, 1860, in the above-entitled cause of Wallerstein, Masset & Co. *vs.* Barque "Grapeshot" and proceeds;

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] (Signed) GEO. LAW.
[SEAL.] By his proctors, SINGLETON & CLACK.
[SEAL.] GEO. A. FOSDICK.

Signed, sealed, and delivered the date aforesaid, in presence of—
(Signed) FRANKLIN H. CLACK.

230 U. S. District Court, eastern district of Louisiana.

CLERK'S OFFICE, *New Orleans.*

I, N. R. Jennings, clerk of said court, hereby certify that the foregoing 222 pages manuscript, &c., together with 344 additional pages manuscript, bound as vol. 2d, separately from the present vol. 1st., for the convenience of the court and of counsel, the same being very voluminous, contain and form a true, correct, and complete transcript of the original record of said court in the case in admiralty of Wallerstein, Masset & Co., libellants, *vs.* The Barque "Grapeshot," proceeds and freight, whereof George Law, of New York, is claimant, No. 7,370 of the docket of said court.

In testimony whereof, I hereto set my hand and the seal of said court, at New Orleans, this 25th day of May, A. D. 1860, and 84 year of American independence.

[SEAL.] N. R. JENNINGS, *Cl'k.*
By ROB'T M. LUSHER, *D'y Clerk.*

231 United States Court, fifth circuit and district of Louisiana.

I, Charles Claiborne, clerk of said court, hereby certify that the foregoing 230 pages manuscript, together with 382 and 140 additional pages manuscript, bound as vols. 2 and 3, separately from the present vol. No. 1, for the convenience of the court and counsel, the same being very voluminous, contain and form a true and complete transcript of the records of appeal filed in this court on 26th May, 1860, in the case of Wallerstein, Masset & Co. *vs.* The Barque "Grapeshot," proceeds and freight, whereof Geo. Law, of New York, is claimant, bearing No. 3,301 of the docket of this court.

In faith whereof, I grant these presents, under my signature and seal of said court, at New Orleans, this 1st day of May, 1867, and of the independence of the U. States of America the 91st year.

[SEAL.] CHS. CLAIBORNE, *Clerk.*

I, Edward H. Durell, United States Judge for the district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as Clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 1 day of May, A. D. 1867.

E. H. DURELL, *Judge.*

232 N. B.—The references in the body of the transcript indicate the pages of the record on file, and the marginal references show the pages of the copy itself.

CHS. CLAIBORNE, *Clerk.*

END OF VOL. ONE.

Vol. ii.

Endorsed: No. 3,301, vol. 2d. United States of America, eastern district of Louisiana, fifth circuit. To the hon. U. S. Circuit Court. Appeal from U. S. District Court, sitting in admiralty. Wallerstein, Masset & Co., of Rio de Janeiro, libellants, on bottomry bonds, *vs.* The barque Grapeshot, proceeds and freight. Geo. Law, of New York, claimant herein, appellants. Vol. or part 2d of transcript. Claimant's evidence, with notes of exceptions thereto. Filed 26 May, 1860. Sig. T. W. Gurley, clerk.

1 U. S. District Court, eastern district of Louisiana.—In admiralty.

WALLERSTEIN, MASSETT & CO., of Rio de Janeiro, libellants, on bottomry bond,
vs.
THE BARQUE "GRAPESHOT," proceeds and freight, Geo. Law, of New York, claimant.
No. 7,370.

Vol. or part second of transcript.—Filed 26 *May*, 1860.—*Evidence for claimant.*

1°. Depositions of John C. Eilers, Philip Myers, Herman Fisher, and Charles Hillman, taken at New York city, by U. S. Commissioner R. E. Stilwell, under commissions, (of 17 Nov'r, 1858,) and on interrogatories and cross-interrogatories thereto annexed, with exhibits therein referred to and identified, offered on hearing, December 12th, 13th, 1859.

2 Excepted to by libellants (on grounds that the commission was not addressed to Commissioner Stilwell, and that his official capacity is not legally attested.) Admitted subject to exceptions, and read in evidence Dec'r 12th, 13th, 1859.

ROB'T M. LUSHER,
Dep'y Cl'k U. S. District Court.

U. S. commissioner's preface to depositions.

Depositions of witnesses, produced, sworn, and examined on the part of the respondent on the 26th day of November, one thousand eight hundred and fifty-eight, and on the twenty-fourth and twenty-fifth days of January, and the twenty-seventh day of May, one thousand eight hundred and fifty-nine, at the office of the subscriber, in the city of New York, State of New York, a commissioner duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit, and which depositions were taken by me upon interrogatories and cross-interrogatories hereunto annexed by virtue of a commission issued out of the District Court of the United States in and for the eastern district of Louisiana, addressed to "any United States commissioner, or Louisiana commissioner, in New York city," for the examination of witnesses in a certain case now depending in said court, wherein 3

Wallerstein, Masset & Company are libellants, and George Law, claimant of barque "Grapeshot," proceeds.

(S'd) R. E. STILWELL,
U. S. Commissioner.

Certificate of clerk of U. S. Circuit Court, annexed to depositions.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

4 I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurats to depositions and exhibits and that the signature is in his proper handwriting; and I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the Circuit Court of the United States America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of these United States the eighty-fourth.

[SEAL.] (Signed) KENNETH G. WHITE, *Clerk.*

Commission for claimant.

5 District Court of the United States, holding sessions at New Orleans, in and for the district of Louisiana.

To any U. S. commissioner, or Louisiana commissioner, in New York city, duly authorized:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Johann C. Eilers, Herman Fisher, Philip Myers, and Charles Hillman, whom you will duly examine on oath touching and concerning certain matters and things in a case now depending in the said court, wherein Wallerstein, Masset & Co. are libellants, and George Law, claimant of barque "Grapeshot," proceeds, and freight; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

6 Witness the Honorable Theo. H. McCaleb, judge of the District Court of the United States, at the city of New Orleans, this seventeenth day of November, anno Domini 1858, and the 83d year of the independence of the United States of America.

(Signed) N. R. JENNINGS, *Clerk*
By ROB'T M. LUSHER, *D'y Clerk.*

The execution of this commission appears in a certain schedule hereunto annexed.

(Signed) R. E. STILWELL, *U. S. Commissioner.*

U. S. District Court, east dist. of Louisiana.

WALLERSTEIN, MASSET & Co. }
vs. } 3,370.
BARQUE "GRAPESHOT." }

Depositions of John C. Eilers, Philip Myers, Herman Fisher, and
Charles Hillman, for claimant, taken on interrogatories by
7 United States commissioner, Richard E. Stilwell, in the city
New York, January 24th and 27th, and May 27th, 1859.—
Filed December 12th, 1859. Offered in evidence by claimant, subject to libellants' exceptions, December, 13th, 1859.

Int'y 1. What is your name, residence, and occupation, and of country a native; and are you a citizen of the United States? Answer fully.

John C. Eilers, to the 1st interrogatory, answers: Answer. My name is John C. Eilers; my present residence is at 38 Oak street, in the city of New York; my occupation is that of a mariner or seaman; my age is twenty-three years and ten months; I am a nanative of Germany, but was naturalized as a citizen of the United
States at Baltimore, in the city court, about nine years ago.

8 Philip Myers, to first interrogatory, answers: Answer.
My name is Philip Myers; my age is between 21 and 22 years; I was born at Cleveland, Ohio, and am a native citizen of the United States, and a free white man; my residence is in the city of Brooklyn, State of New York; my trade is that of a pump and clock-maker, but I have been employed as a sailor on board the barque "Grapeshot," of New York, owned by "George Law," Joseph S. Clark, captain. I expect to go to sea again in a few days.

Answer. Herman Fisher, to the first interrogatory, answers: My name is Herman Fisher; I am between 25 and 26 years of age; I was born in Saxony; I came to the United States upwards of eleven years ago; my residence and home is in New York, where I have relatives: my occupation is that of a mariner, but I can follow other
occupations, as I write a tolerable good hand—have been
9 brought up to business. I became a naturalized citizen of the
United States in the year 1854; I obtained a passport from the State Department of the United States on the 5th December, 1855, as I wanted to go to Saxony to visit some relatives; I have it now in my possession before me. It is vised December the 12th, 1857, by the United States consul at Leipsic, and by foreign authorities in Saxony and Austria in February, 1857, and by the chief of police of Weisse, 3rd of March, 1857, to go to Constantinople from Wieste; and November 7th, 1857, by the Brazillian chief of police at Rio Janeiro. This passport states that I am a citizen of the United States. I was in August, 1858, unemployed, having recently come to this port ("New York") from London, and I intended then either to go to sea to a foreign port, or coastwise to Atlantic port, unless I could obtain good employment on shore. I did not intend to go in the gulf dur-

ing the summer and fall months. Since then I have been employed
at New York on board the United States steam sloop-of-
10 war Brooklyn as ship-keeper. She is now completed and I ex-
pect in a few days to go to sea—to South America.

Charles Hillman, to 1st interrogatory, answers: Answer. My name is Charles Hillman. They call me sometimes Wellman on board the "Grapeshot. My age is nearly thirty-three years; I was born in Bremen; I am a naturalized citizen of the United States Court in this city, New York, and have my papers, but I do not have them here at this time; I am a seaman, and have followed the sea since I was a boy; my residence is in this city; my wife and children live here; I am now employed on a steamship, and am about to go on a voyage to sea, out of the United States.

Interrogatory 2nd. When and where did you ship on board
11 the "barque Grapeshot," and at what wages per month? and
for what voyage or voyages, and how long have you sailed in
her? State fully all the particulars.

John C. Eilers, to the second interrogatory, answers: Answer. I shipped on or about the first of February, 1857, as a seaman on the barque "Grapeshot," at sixteen dollars per month wages. John A. Robertson keeps a boarding-house in New York where I now stay. Shipped me. The barque was to go to Constantinople, and from thence to the Mediterrenean ports and back to New York, and was expected to get back at most in five months, so Captain Clark said. I sailed in the bark till discharged in New Orleans last June, (1858.)

Philip Myers, to second interrogatory, answers: Answer. I shipped
on board the "Grapeshot," in New York, about the 5th
12 of February, 1857, and sailed in her until she arrived in
New Orleans. When I shipped, Captain Clark said, I think, that the barque was bound to Constantinople with a cargo of rum, and straight back to New York, stopping perhaps at Smyrna or Palermo, or some other Mediterranean port, to get a freight of fruit. If there was no freight at Constantinople, he said, he should be back to New York in the summer, or at least in the fall. I would not have shipped if he had not said what he did. I was paid off and discharged on the 5th of June, 1858, at New Orleans. I did not consider my discharge there to be right, as I shipped to come back to the home port of the barque, (New York.) My home is at Brooklyn, opposite New York, and I shipped to come back to my own home, and would not have agreed to stay away till June, 1858, and then come back in the summer months to New Orleans, if I had suspected Captain Clark's purpose.

13 Herman Fisher to second interrogatory answers: Answer. I
went to Constantinople from Trieste as passenger, in March, 1857, in an Italian Brig. In Constantinople we lay alongside the barque, "Grapeshot," of New York, Captain Joseph S. Clark, and on the 28th of April, I shipped for the "Grapeshot" for a voyage direct to New York, and entered on board of her on the 29th of the same month. I signed shipping articles to ports in the

Mediterranean and to New York from those. The captain told me that he was going to stop at Smyrna and Palmero or Malta, or other ports in the Mediterranean for freight, and to go from thence directly to the United States, and that at the outside the voyage should not exceed three months. I was recommended to the captain by Mr. Brown, who is connected with the American legation at Constantinople, and who knew me, as I had been at that port before. I was to have two pounds ten shillings or $12 50 per month. I was anxious to
14 return home to the United States, which was the reasons for
shipping in her, and as she was the finestand fastest vessel in port, and much spoken of. When I shipped a man named Ballard or Bayard Sharpe was first mate; a man whose name was, I believe, Charles Hillman or Wellman was second mate; Sharpe was shipped in lieu of the mate, who came out in the bark from New York, and who left her in Constantinople; and Hillman who came out also from New York as a seaman was made second mate in the place of the second mate, who also left the barque at Constantinople. Two new men besides myself and a Danish boy were shipped on board at Constantinople, and a new cook (a mulatto) in lieu of some that left at Constantinople, and a man the barque lost overboard on the voyage from New York to that place. They all, I believe, shipped for a voyage to the United States, in the same manner that I did. So at least I understood from Captain Clark. I would not have shipped had I supposed the Captain was not
15 going home to New York, as he assured me he was.

Charles Hillman, to second interrogatory answer : Answer. I shipped on board the barque "Grapeshot," of New York, Captain Joseph S. Clark, about the seventh of February, 1849, at New York, for a voyage to Constantinople and back to this port. I shipped as a seaman. I expected to come right back, or I should not have shipped. I was told she was coming back from the Mediterranean to New York, would not be gone more than four or five months at the most, and would certainly be back before cold weather set in, and I would not have left my wife and family here longer. I was shipped at a shipping house, I believe, in South street, but I do not recollect the name of the shipper; others of the crew were shipped there. I have looked at the list marked Exhibit A in
16 John C. Eilers' deposition, and I believe it gives the names
and times and other circumstances correctly or nearly so. I have seen Herman Fisher, John C. Eilers and Philip Myers since the bark arrived at New Orleans, and they told me that they had given in their depositions in this case. Myers asked me to go and see Mr. Law and give my evidence. I met Myers in Brooklyn a few days ago. I do not know where any of the rest of the crew that left her in New Orleans are now. I came back to New Orleans in the bark. Captain Clark did not settle with me fairly, but I signed the receipts rather than get nothing, and as he had me in his power; Captain Clark wronged me out of more than forty dollars of my wages.

Interrogatory 3d. What port and places has said barque visited since you went on board of her, and how long did she stay in

17 each port? State as particularly as you can, and give dates
as nearly as you can.

John C. Eilers, to the 3d interrogatory, answers: Answer. We sailed
from New York about February 9th, 1857, for Constantinople. We
arrived there about the 10th of April, 1857, and left Constantinople
about the 10th or 11th of May, (I think,) 1857, for Valletta, in Malta,
where we arrived about the 17th of May, and stayed 8 or 10 days,
when we sailed for Ivica, in the Ballaric Isles, where we arrived about
the 6th day of June, 1857. From Ivica we sailed about the 15th of
June, 1857, for Malaga; we arrived off Malaga in the last ten days of
June, 1857, and sailed the same day for the Cape de Verd Islands.
We arrived at the Isle de Sal, one of the Cape de Verd Islands, about
the 6th day of July, 1857, and sailed the 12th day of July
18 for Buenos Ayres or Rio Janeiro. We arrived at Rio about
the first day of August, 1857. We sailed from Rio about the
8th of November, 1857, and arrived at the Isle de Sal; staid there
two days, and went from there to San Blader, and from there to Isle
de Mai, also one the Cape de Verdes, where we arrived about the 7th
day of December, 1857, and sailed from thence for Rio about the 14th
of December, 1857, and arrived at Rio about the 2d January, 1858.
We sailed again from Rio about the 17th of April, 1858 for New
Orleans, where we arrived about the 8th of June, 1858. There was
a talk at Constantinople of our intending to stop at Symrna or Palermo,
and afterwards while at Valetta, of stopping at Trossoni or
Paliagani, and other ports; but on said voyages we stopped nowhere,
except as I have stated, and at the Grand Caymen, in the Caribean
sea, for fire-wood, and where also we got some molasses and vegetables
and other stores. This was on her voyage to New Orleans.

19 Philip Myers, to third interrogatory, answers: Answer. We
had a fine run out to Constantinople. We left there about, I
think, the 10th or 11th May, 1857. When we left there, I supposed we
were going to stop at Symrna first, but we did not, though the captain
talked of it. We first stopped atValletta, in Malta, and staid several
days. He said he was going to stop at Palermo and at Cagliari, but he did
not. We sailed from Malta to Ivica in the Balearic Isles. We staid
at Ivica longer than it was necessary. After leaving there we touched
at Malaga, or rather off that port, and stayed a day. We did not
touch at any other port after leaving there till we arrived at Sal Island,
one of the Cape de Verde Islands; from there we sailed to
Rio Janeiro. After we got there, the captain waited several days at
the anchorage abreast of the Sugar Loaf for the Indiana, whith the
captain of whom he made a bet that he would beat him from the
Cape de Verde Islands. After the Indiana came in we went
20 up to town with the bark. We arrived there about the first
of August, 1857. We anchored at the anchorage abreast the
Sugar Loaf 8 or 9 days, and the captain went up to town. After the
Indiana came in the bark went up, and commenced discharging on
the 13th or 14th, I think. After we had discharged we laid there
until about the first of November. About the 4th or 5th of November,
1857, Captain Clark sailed in the bark, in ballast from Rio

for the Isle de Sal for another cargo of salt. We had a fine voyage out, and got back to Rio with a full cargo of salt the day after New-Year, 1858; we commenced discharging the salt at Rio within 10 or 12 days, I think, we got into port. On the 19th of April we sailed from the coast for New Orleans. I wished to say that I may err; it is possible, in some instances as to precise dates.

Herman Fisher, to third interrogatory, answers: Answer. We sailed, I think, about the 8th or 9th of May from Constantinople, and
21 went into Valetta, in Malta, about the 16th or 17th of May. We
entered the port, and the captain said we went in there for letters from Palermo, which he said he got, and that they stated he was a month or two too early for the fruit season, and that he could not get any freight of fruit there for the United States. We staid at Valetta some 8 or 10 days. The crew went on shore there. The bark was at anchor in the harbour. We sailed from Valetta to Ivica, in the Balearic Islands. It took us about two weeks. We staid at Ivica about three weeks. We sailed from Ivica to Malaga, in Spain. It took us about four days, I think. We sailed from Malaga the same day; and after we left Malaga, the captain said he would go to the Cape de Verde Islands and get some salt and sail from thence to the United States, which declaration was to satisfy the crew; we arrived at the Isle de Sal, one
22 of the Cape de Verde Islands, about the latter part of June
or first of July, 1857. We stayed there about a week. We had some expectation of his going to the United States, as he had assured us; but just before and just after leaving the Isle de Sal, we understood his intention was to go to Buenos Ayres where we had cleared for, but that he also intended to touch a Rio Janeiro. It leaked out in this way. The ship Indiana of Rio Janeiro, formerly an America ship, was at the Isle de Sal while we were there, and Captain Clark and her captain were bantering each other about their vessels sailing, and we heard had laid a wager as to which would get to Rio Janeiro first, and this, I believe, caused the captain to touch at Rio de Janeiro, in order to win the wager. We arrived at Rio about the first day of August, several days before the Indiana, though she sailed several days before we did. We had a good passage, and the vessel met with no accident of importance on it. We took about three weeks to discharge, but could have done it easily in a week if he had wished. I quitted the bark the 26th Oc-
23 tober, 1857, at Rio. A few days before, I lift Rio, I believe
the day after New Years, the bark came into Rio with a full cargo of salt from Isle de Sal. I went to see her, and to see my old shipmates on board of her, and stayed an hour or more in a boat by her, talking to them; I had some loose things on board which I had left, and which I wished to get, but did not get. Before I left Rio, I saw her every day, and saw some of the crew also, we conversed about the barque, and they told me she had been back to the Cape de Verde Islands.

Charles Hillman, to third interrogatory, answers: Answer. We left New York about the 9th of February, 1857, and had a good voyage to

Constantinople, and met with no accident, except the loss of one
man overboard. We went into the Naoninus bay and anchored.
We did not run foul or drag foul of any vessel there, that I can re-
collect of, and I am pretty certain; nor did we drag foul of
24 any vessels at anchor. We staid there a day or two. The
wind was ahead, which was the reason for making a harbour
and coming to an anchor. We had no pilot out or in. We went to
Constantinople, then to Valetta, then to Ivaca, then off Malaga, then
to Isle de Sal, then to Rio, thence to Isle de Maeys, and then back to
Rio again, and then to New Orleans, where we came in about 6th or
8th of June, 1858. I cannot now state precisely how long we staid
at each port, but I think, say 5 weeks at Constantinople, a week or
ten days at Valetta, about two days at Ivaca, half a day off Malaga,
and a week or more at Isle de Sal, and the first time at Rio about
three months, and the last time at Rio about three months and a
half, and at Isle de May about 10 days.

Interogatory IV°. What was her cargo on each of said voyages?
State as particularly as you can each voyage and the quantities.

25 John C. Eilers, to the fourth interrogatory, answers: Answer.
The cargo on the voyage from New York to Constantinople was
rum, coffee, rosin, logwood, segars, tea, flour, and a buggy. I can-
not state the precise quantities of each. From Constantinople to
Valetta and to Ivica the bark was in ballast. From Ivica to Malaga
and Isle de Sal she had a cargo between 150 and 200 tons of black
salt, and from Isle de Sal to Rio the same, and in addition 180 or 200
tons of salt of better quality. From Rio to Isle de Mai she was in
ballast, and from the Isle de Mai to Rio with a full cargo of (say
370 tons) good salt. On the voyage from Rio to New Orleans her
cargo was 3,800 bags of coffee.

Philip Myers, to the fourth interrogatory, answers: Answer. At the
Balearic Islands, we took in, I suppose, 150 or 200 tons of inferior salt,
bought by the captain. I don't know exactly what it cost; but as
near as I remember, not over $1 50 a ton, as he paid cash
26 for it. After we had passed through the gut and got into the
Atlantic, we found the ship sailing southeasterly and the cap-
tain then said he would go to the Cape de Verde Islands, and fill his
cargo of salt, and go from thence to the United States with it. We
were not satisfied as this was going directly out of our course, but we
could do nothing and he made fair promises. When we got to Salt
Island, he bought more salt, and enough to make up a full cargo.
The ship "Indiana" of Rio, I know, was there for salt, and left port
several days before us. The captains were bantering each other
about sailing, and laid a wager, as we heard, but we did not fully
credit it, as captain Clark had assured us he was going directly home,
till after we got to sea, when we were told that he was going to Rio
Janeiro with his salt, and intended to beat the "Indiana." We did
beat her several days to Rio.

Herman Fisher, to the fourth interrogatory, answers: Answer.
27 We left Constantinople in ballast; at Ivica we took on board
part of a cargo of salt, say 200, or perhaps 250 tons. I do not

know the cost of it. The captain told different stories about its cost. He said at one time it cost him only $2.00 per ton, and at other times less, and then again more. From what I learned of the price of salt there, I do not think it cost him $2.00 per ton on board. We discharged the ballast by taking it in the long boat, outside the harbor. We sailed from Ivica to Malaga in Spain. We had on board only the salt shipped at Ivica. It the Isle de Sal, we took in about 180 tons of white salt of first rate quality, purchased by the captain. The captain said he had paid out all his money for the salt. It cost, I understood from him, less than $2.00 per ton. The day after New Years, 1858, the barque came into Rio again with a full cargo of good salt from Isle de Sal. The crew told me that they had got a full cargo of salt on board.

28 Charles Hillman, to the fourth interrogatory, answers: We carried out rum, rosin, flour, segars, and a buggy. Had no cargo back until we took on board some salt at Ivaca. We took in more salt at the Isle de Sal which we carried to Rio. We had no cargo from Rio to Isle de Mayo, but we brought salt back from Isle de Mayo to Rio. We carried coffee to New Orleans.

Interrogatory V°. Who was the owner or shipper of said cargo, and who the consignee? State in each case as nearly as you can.

John C. Eilers, to the fifth interrogatory, answers: Answer. I cannot state except as to the cargoes of salt, both of which I understood from the captain, were purchased on his own account.

29 Philip Myers, to the fifth interrogatory, answers: The captain bought the salt on the Isle de Sal as his own speculation.

Herman Fisher, to the fifth interrogatory, answers: I cannot say anything different from what I have already stated, nor add anything thereto, except that I have since then seen the original clearance papers of the barque from Ivica, dated 20th June, 1857, for Buenos Ayres. Mr. Law gave them a few days ago to me to answer to this answer, and stated they were with other papers left with him by captain Clark, in August or September last. They are original by the authorities at Ivica. I never saw them before, but have no doubt they are genuine. They are annexed hereto, marked Exhibit N, N, No 10; a translation is also annexed. Those papers show that the suspicions of the crew as to the intentions of the captain were well founded.

30 Charles Hillman, to the fifth interrogatory, answers: I do not know anything certain as to the shipping or consignees of the salt, nor as to its purchase or sales. The captain said he had made a large profit on the first cargo, and I reckon he would not have gone for the second if he had not done so.

Interrogatory IV°. If Joseph S. Clark, the master, was the owner or shipper of any part of any cargoes, where did he purchase it, and of whom, the costs? State as fully as you can.

John C. Eilers, to the sixth interrogatory, answers: He purchased the salt shipped at Ivica whilst at that place, and he also purchased that shipped at the Cape de Verde, on both voyages; but I cannot give the names of those he bought it of at either place, nor can I specify the cost or price with certainty.

31 Philip Myers, to the sixth interrogatory, answers: The captain said he bought the salt mentioned in the fifth interrogatory upon his own speculation, and got it cheap. He sold it in Rio, and said that he made more than $3,000 clear profit, over and above all expenses and freight.

Herman Fisher, to the sixth interrogatory, answers: I have already answered this as fully as I can in the fourth interrogatory. I know nothing additional that I now think of.

Chas. Hillman, to the sixth interrogatory, answers: I cannot state as to this. The captain brought several dollars in specie on board at Constantinople. I do not know what he did with it; I suppose he paid some for the salt. He spend a good deal of money trading at Rio both times we were there.

32 Interrogatory seventh. What was the freight on such cargoes? State particularly as to each.

John C. Eilers, to the seventh interrogatory, answers: I can't state with certainty.

Philip Myers, to the seventh interrogatory, answers: The captain sold his cargo of salt in Rio for a good price, as he said. I heard him say several times that the salt paid freight, and that he had made a good profit on it; besides, he says he made several thousand dollars clear. This was after he discharged it.

Herman Fisher, to the seventh interrogatory, answers: Just before we sailed the captain brought on board, as I understood, the freight he received in Constantinople. It was in coin, and I under-
33 stood was chiefly in English gold. What sum there was, I do
not exactly know. All I know was what was said by the captain; the captain said there was several thousand dollars. When we laid off Malaga the captain went ashore in the boat, and I, with several others, went with him. He called on the American consul and inquired about freight. I went along, because I had become suspicious of the captain from his actions and conversation. The consul told him there was a cargo for New York on hand ready for shipment, and which would pay a good freight. I heard them talk about the price of the freight; the captain observed to me that he had a great mind to take it, as if he threw all his salt overboard he would make money by the freight offered to him. After some talk, he wanted the consul to arrange that the freight should be shipped to Buenos Ayres or Rio Janeiro, and said that he did not want to go to New or to the United States, and he said he would
34 take any other freight to Buenos Ayres or Rio Janeiro; but
there was no freight at Malaga for those ports. We stayed a day off Malaga. The captain, after being ashore, came on board, and after some time, in which he seemed to be thinking of the matter, he went ashore again, and told the consul that he would not take the freight to New York, nor to any place but Buenos Ayres or Rio Janeiro, and as there was not freight for these ports arriving at Rio, the captain finding he could sell his salt profitably. The captain said he concluded to discharge the cargo, and he talked about going direct to the United States to quiet those of the crew who were anxious to

get home. I heard the captain say that he made a clear profit by the salt of at least seven or eight hundred dollars. There was, I understood, ashore plenty of good freight at Rio for New York, when we arrived there, and several weeks afterwards, and were high.
I ascertained there were good freights there for the Atlantic
35 ports of the United States, and among them for New York,
which the captain could have got if he had wished to. but I found out that the captain had no idea of going to the United States.

Charles Hillman, to the seven interrogatory, answers: I cannot state as to this with any certainty.

Interrogatory VIII. What passengers were on board said barque in any of such voyages? What was the passage-money received by the master? State particulars as fully as you can.

John C. Eilers, to the eight interrogatory, answers: A young man named Beers came on board at Constantinople to return to his home in New York. He left the "Grapeshot" at Ivica, and went on board the barque "Cadet" for New York. I don't know anything
about the passage-money. I undertood he was sent on board
36 by the consul, and transferred at Ivica to the "Cadet" by the
commercial agent there, or some other one acting as such. Mr. Beers was the only passenger we had on board any time. It leaked out at Ivica that the reason he left us was that the bark was going to Buenos Ayres, Montevideo, or Rio, before she returned to New York, and the crew were very much dissatisfied. We thought that the reason why the captain did not take freight from Constantinople, which he could readily have obtained there for Smyrna, was that he designed not to return to New York, and that this was the reason why he did not stop at Smyrna and the other Mediterranean ports I have named to try to get freight to the United States. When he was offered freight at Valetta for the United States and refused it, we became fully satisfied of his designs to keep the vessel away from the United States; and afterwards, when he left the Mediterranean, and steered toward the Cape de Verd, our suspicions were
confirmed.

37 Philip Myers, to the eighth interrogatory, answers: We
had a passenger on board from Constantinople to New York named Beers, or Beer. He left us at Ivica, in the Balearic Isles, and went to the bark "Cadet," bound to New York. I do not know anything about the passage-money.

Herman Fisher, to the 8th interrogatory, answers: We had but one passenger on board, a young man named Beers, either Francis or Charles, a printer, a newspaper reporter by occupation, and I learned, who had been employed in the office of the New York Herald, and had gone out to Constantinople and Sebastopol during the Russian war. I do not know what passage-money he paid. I suppose he left the bark because he found out at Ivica that she had cleared for Buenos Ayres.

Charles Hillman, to the eighth interrogatory, answers:
38 There was one passenger, Mr. Beers, from Constantinople to

Ivica; I do not know what his passage-money was; he left us at Ivica. While we was there we heard the bark was going to Buenos-Ayres, but the captain denied it, and said we were coming straight home. The same thing occurred at Isle de Sal, but the captain deceived us; several of us would have left the bark at Ivica and Isle de Sal, but we could not get home; and we would have left at Rio, the first voyage, when we found he was not coming home, but we had no money, and he had us in his power. Herman Fisher and others did leave, but the consul would not give him any aid, and seemed to be in with the captain, who fixed np his boat for him, and they were very thick.

Interrogatory IX. Did or did not said barque meet with any accident in any of said voyages, or in any port whilst you were in her? If so, state fully the character thereof, when, where, etc.

39 John C. Eilers, to the ninth interrogatory, answers: Excepting that in going into Rio, the first voyage, when about abreast the Sugar Loaf, she was run aboard of by another bark and slightly damaged the "Grapeshot." Did not meet with any accident, or receive any injury whatsoever, during any of said voyages, or whilst in any of said ports. The damage in the instance mentioned was trifling, and was repaired at Rio by a ship carpenter, on a Yankee schooner there, and did not cost ten dollars.

Philip Myers, to the ninth interrogatory, answers: We had a bark run into us in sight of Rio, and damaged our quarter board a little, and one of our boats, and also the shaft of our steering wheel, and the repairs of this took a day or two. They were done by the captain
of a American schooner there, "The Young America." The
40 damages were trifling, and, I suppose, did not amount to $10
in all. The bark did not meet with any other accident on any of said voyages, or in any port, or whilst I was on her.

Herman Fisher, to the ninth interrogatory, answers: We had a good passage to Rio. We tore a small sail in a squall, but it was repaired on board. Just outside of the harbour of Rio Janeiro, but in sight of the Sugar Loaf, we came in colision with a Hamburg bark, and slightly injured our quarter board, and also unshipped the shaft of the steering wheel, and damaged a little one of our boats, but this was all soon repaired. The captain of the schooner "Young America," of New York, did it in two or three days and at a small expense. The bark was in good order and condition, and well found in every respect.

Charles Hillman, to ninth interrogatory, answers: I have be-
41 fore said that the bark did not meet with any accident what-
ever. I mean on any of the voyages, except on going into Rio the first time in August, 1857. She came afoul of another bark, and damaged her (the Grapeshot) quarter a little, and did one of her boats some damage, but all the damage to the barque and boat did not exceed ten or fifteen dollars, and was trifling. It was repaired by a carpenter on board of a Yankee schooner in port. I am postitive the bark sustained no other injury or damage whilst I belonged to her, from February, 1857, to June, 1858.

Interrogatory X°: Did or did not said bark leak in any of said voyages, and injure her cargo thereby? If so, state when, where, and whether she was in danger therefrom, and the nature of the damage to cargo fully and particularly.

42 John C. Eilers, to the tenth interrogatory, answers: The "Grapeshot" is a tight, staunch, and sound veessel—of course she leaked some little. There are but very few of even the best vessels that do not, especially sharp vessels. I consider her a tight vessel. I never heard of her cargo on any voyage being in any degree injured by her leaking. I never knew of any damage from her leaking, or of any necessity for pumping more than is general and usual on board of all ships that I have sailed in.

Philip Myers, to the tenth interrogatory, answers: In the voyage out to Constantinople the barque did not leak, and was in good order. The vessel did not leak on her voyage out and in from Rio to Isle de Sal. We were not obliged to pump her to keep her afloat. No part of her cargo was damaged that I heard of. I knew she
43 did not leak more than is common for first class vessels, especially if they are sharp, and I know none of her cargoes were injured by any leaking on any of the voyages she made while I was in her, except her last voyage from Rio to New Orleans she leaked a little, and stained some of her cargo I understood.

Herman Fisher, to the tenth interrogatory, answers: The crew told me they had a fine passage out and in from Rio to Isle de Sal and back, and had fine weather, and that the captain would make a fine profit on the cargo. The bark appeared to be in excellent order and condition. Although we talked of the bark none of them intimated that she had leaked any, or that they had been obliged to pump any, or that any of the cargo was damaged, and I think they would have mentioned it if it had been the case; and, as I have before
44 stated, they told me they had fine weather and a good time—no bad leak. The bark did not leak of any account, not more than the best of vessels generally do. Whilst I was on board her cargo was not injured, and I heard nothing of the cargo she brought into Rio in January, 1858, being injured; and, as I have stated, I was close to her more than once, and saw her after she came in from her last voyage, and after she arrived at Rio in January, 1858. As to the either the bark or her cargo being any ways damaged from her leaking whilst I was attached to her I knew that it was not so, nor did I ever hear, nor do I believe it was so, on her second voyage from the Cape de Verd to Rio.

Charles Hillman, to the tenth interrogatory, answers: The bark did not leak more than good and staunch vessels usually do. She was a good sea boat, and one of the best and safest vessels and fastest sailers I was ever on board of. I never heard of her cargo
45 go being damaged on any of said voyages until now, when I am told Captain Clark wrote to Mr. Law. It is not true, or at any rate I never heard of it before, and I should have known it while on board if it had been so. I know while I was on board she never was in any danger from any leak, nor was there any extra pumping on board of her during the time I was on her.

Interrogatory XI°. Do you know respecting the necessity of getting repairs done to said barque at Rio Janeiro to enable her to prosecute her voyage home to New York? If so, state when it was first discovered, and by whom and how, &c.

John C. Eilers, to the eleventh interrogary, answers: I was on board of her all the time at Rio. I never thought there was the slightest necessity whatever for getting repairs done to her at Rio
46 to enable her to take a cargo safely to New York or New Orleans or elsewhere on the Alantic side of the United States. I am of the same opinion now. A hundred dollars or so might have been laid out on her to advantage, but even this was not necessary for her safety, or that of her cargo, on such voyage.

Philip Myers, to the 11th interrogatory, answers: As to the repairs of the bark at Rio, we had the bark hove down, and took off chiefly of the copper or metal on her, except on her middle and keel, and scraped her bottom and caulked it. There was no necessity whatever for taking her copper off to enable her to reach the United States with a cargo in safety, and without any damage, except the common risks to all vessels; she did not leak; she was staunch, tight, and in good order. Such was the judgment of the crew, and all others that I conversed with. We could not understand why the old metal
47 was taken off and other copper put on in its place. It was a good deal talked of. The bark did not need caulking, nor anything else done to her. She was not wormed any that I saw, and I should certainly have noticed it. I am positive in my belief and judgment that she was not wormed, and I helped scrape her bottom after the metal was taken off, nor was she decayed that I saw. I did not see any plank or any graving pieces put in the bark before the copper or metal was put in. I do not believe there were any, unless there were some trifling pieces patched in, so as to have it said that work was done. I help scrape the bark's bottom, and I did not perceive, and I do not believe that there was, any necessity for anything of the kind whatever. The caulking done in her was not needed if she had been left alone, and what was done was an injury to her, for it was badly done, and she leaked some on her voyage from Rio to New Orleans, which she did not do before. The metal taken off of
48 the bark was but little worn, and was sound and good; a half a dozen pieces or so would have been plenty enough to have been used in the place of all on her that was injured. She did not need new coppering. I thought so when the captain ordered the metal to be stripped off. He was not at the bark, but up town, when it was taken off. And after the metal had been taken off, if great care had been used in taking it off, it would have been just as well to have the same metal on again as it was to put on the metal that was put on—of course supplying other metal where any was injured in being taken off. The metal put on by Captain Clark was second-handed metal that had been used, and was very light and indifferent. It was the best of a large quantity that had been taken off a large American ship, I believe "Western Continent," bound from New York around
49 the Horn, and which stopped at Rio for repairs, and this metal

was lying in the yard where the bark was repaired, and Captain Clark bought it low, and put part of it on, and shipped the rest by the "Morning Star" for New Orleans. I heard Captain Clark say that it came from a ship of a name, I believe, I have stated. There was none new amongst it; all of it had nail-holes where it had been nailed on before, and we nailed through the same holes when we could. I did not consider it as any better, and in fact not so good as that we took off the bark.

It was generally lighter, and having been used, is not put on so well as the other was, which was put on when new. One piece only, I think, was put on the keel of the bark, and I believe none on her rudder. I not only am convinced that there was not any necessity of anything being done to the bark, and that the whole affair was a fraud, but I am convinced that she was not so good, after
50 what was called the repairs were all done, as she was before
they were begun. The proceedings about the old metal, and the way it was carried to the "Morning Star," at the time seemed very suspicious to me, and I thought there was something underhanded going on, and I then formed the same opinion as to the stripping off the metal from the "Grapeshot" and putting on in its place a second-handed metal that had been used on another ship, and that was no better, and, I thought, not as good as that taken off. Having been all the time on board the bark, and knowing what occurred, and what did not happen in relation to the work done on her, and the metal and all materials furnished, and that there was not in the first place any necessity for incuring any expense in repairs exceeding one hundred and fifty dollars at most, and not more than two hundred dollars for provisions and supplies for the home voyage, I don't think, and never did think, that the Grapeshot needed $100 worth of repairs at Rio to enable her to go to New Or-
51 leans or to New York with a full cargo, and as free from dan-
ger as any vessel on such voyage; and don't think, even to the amount I have stated, were actually necessary, but I consider that such sum would not have been thrown away if laid out on her. The amount said to have been expended for repairs, I find upon looking at a copy of Hanah & McLennan's bill filed in this case, now shown to me, is r's 13,065 260, estimated, at r's 1,720 per dollar, at $7,596 08. I regard this amount as ridiculous. I am fully satisfied, and I think every honest man who was at Rio, and acquainted with what was done, and the way it was done, would be convinced on reading the bills filed that the claim and the bottomry bond are a perfect swindle. Hanah and McLennan's bill is, I think, more than three times as much as it ought to be if the repairs had been needed, but they were entirely unnecessary as I have stated. The "Grapeshot" was not as good after they were done as she was before they were
52 begun.

Herman Fisher, to the 11th interrogatory, answers: Further than I have already answered, I would state, when we arrived in Rio, the bark was in good order and condition. The captain stayed ashore nearly all the time at Rio Janeiro. He was very intimate

with the captain of the bark "Morning Star," of New Orleans. They were exceedingly thick, and nearly all the time together. I do not think the bark needed any repair in January, 1858, when I last saw her. I have no idea of her needing new copper or carpenter work to any considerable amount. I have no doubt $100 would have paid for all that it was necessary to do to her. I should have noticed, I think, if anything material had been the matter with her. From what I saw and knew, of the time and condition of the bark, at Rio, in January, 1858, considering that she lay, as I have understood, in port all the time after that till she sailed in April, 1858, for New Orleans, I do not believe she needed any repairs, what-
53 ever, which ought to have exceeded $100 in their costs, unless she met with some accident in port in January, February, March, or April; my judgment on this point is decided. I am satisfied that unless such accident did occur, she needed no repairs to enable her to reach New Orleans or New York with a cargo in safety. I knew the condition of the bark well, and my judgment is formed from that knowledge. I never heard of suchaccident having occurred.

Charles Hillman, to the 11th interrogatory, answers: I was on board the bark, as I have stated, and several months acted as second mate, and knew her order and condition well. She was tight, staunch, and in good order all the time. The crew painted her inside and outside two or three times, and kept her in tip-top order, and the captain was a good captain, so far as keeping his ship snug and in order was concerned. I was on board of her when she was hove down at Rio, and
54 her copper stripped off in March, 1858. She did not need any repairs at Rio in March or April, 1858, that ought to have exceeded in costs two hundred and fifty dollars at the outside for any voyage that she could be sent on to China, round the Horn, East Indies, or elsewhere. I am positive that she did not need repairs to that amount to enable her to come from Rio with a full cargo of coffee in entire safety, either to New York or New Orleans. I am certain that there was no necessity for repairs of any kind for such voyage that would have exceeded one hundred dollars in cost at Rio if fairly laid out. There was no necessity for taking off her metal or copper, and recoppering her. I say no necessity whatever, because I know something about such matters, and was on board the bark, and knew her condition well. We all talked about this, I mean the crew then belonging to the bark, and we all thought and said at the time that there was roguery going on in the stripping off the copper. A few sheets of copper might have been put
55 on the bottom, where the other was rubbed or chafed, but in all not exceeding a dozen. I saw her when she was hove down, and examined her bottom. She was not wormed that I saw, and I examined her bottom myself, and helped to strip off the copper. Hanah and McLannan furnished the copper that was put on, and hove the vessel down, and did the work.

Interrogatory XII. Did you know of the kind, character, and amount of repairs on said barque in Rio de Janeiro in the spring of 1858? If so, state fully and when they commenced being made, and when they were finished, and how they were made, and who made them, and state as nearly as you can those who contracted to do them, and of the master-workmen and workmen employed in doing the same.

56 John C. Eilers, to the twelfth interrogatory, answers: I do. I assisted in making the repairs referred to. The first I ever heard of any repairs being contemplated was when 2d mate Nugent and myself were sent by Captain Clark to pick out and count the pieces, and weigh the second-handed yellow metal that had been stripped off the American ship "Western Continent," and which he said he had purchased to put on the "Grapeshot." We counted about 906 or 907 pieces of this second-handed metal, and weighed several pieces, which did not weigh more than six pounds a piece. It was what is called 28-oz. metal. It was in Hanah and McLannan's storehouse or warehouse, when we selected it. It was full of nail holes and some of it considerably worn, and on the whole it was quite indifferent. It was unfit to put on a vessel. I helped put it on the "Grapeshot." We had often to drive two nails in the old holes to fill them up. We had to carry some of it back, on account of its being so worth-

57 less, and pick out other pieces instead. It was very little if any better than that we took off the "Grapeshot." It was not worth half price of new metal.

After the metal was selected, Hanah and McLannan undertook the repairs, assisted by the crew of the "Grapeshot." They commenced getting ready on a Monday. They got the tackle ready and stayed up the rigging, so as to heave the bark down. It was before this that the metal was picked out, counted, and weighed by Nugent and myself. The bark was caulked above light water before heaving her down. This caulking was done above water, whilst we were getting ready to heave her down. Everything was prepared properly before she was hove down; and there was 9 or 10 men besides the crew employed in this, and say 8 or 9 in caulking. It took 60 men, or thereabouts, say an hour, to heave her down. We had 40 at first, and got 20 more afterwards. Hannah and McLannan furnished them.

58 We commenced heaving her down by 6 a. m., Friday morning, and had her hove down by 7 a. m. the same morning. We then commenced taking off the metal from the bark and scraping and caulking her, and putting on the metal we had picked out on the starboard side of her bottom; and we finished the side completely by noon of Saturday, of the same week. After she was hove down there were, say, 35 men and the crew, engaged on Friday and till Saturday noon in finishing the starboard side. We put a piece on the shore of the back which was some injured by worms, there not having been, as was supposed, any metal or copper even upon it. This piece was 8 or 9 feet long, and say 14 inches or so wide, to 4 or 5 inches thick. We put metal over it—some of that we had selected. There was a small graving piece, a little more than a foot in length, and one inch or so thick, and about six inches in width, inserted under her starboard bow, about three feet from the keel. The metal had been rubbed at that place and was a little torn; but I saw

59 no signs of her being wormed there. I saw the place ex-
amined to ascertain this. This graving piece was not necessary to be inserted, but it was put in to make the bottom smooth to put the metal on, as examining it, to see if it was wormed, had roughened it. There was a small piece of new plank put on under her starboard counter, above deep water-mark, about two feet below the nameboard. It was, say 2½ feet long, 4 inches thick, and about six inches wide. The old plank was taken out. It was some decayed. This was not coppered over, and could have been done without heaving the bark down just as well. These places were all that were repaired on the starboard side, including the shoe; three pieces of plank only of the size mentioned were used in those repairs. There was but one graving piece inserted, as stated. I would have known if there had been any others. The next Monday, after the Saturday I have mentioned, the gear was shifted and rigging and tackle changed to
the other side; and we continued getting the bark ready to
60 be heaved down, so as to get on the larboard side. All the
week was occupied in doing this. Some 9 or 10 men were so employed; and same number in caulking above low water-mark. On the next Monday or Tuesday she was hove down. It took about an hour, and about the same force as before; and the larboard side was then stripped of the metal, scraped, caulked, and the other metal put on, as had been done on the other side; and it was finished in a day. There were no graving pieces inserted on the larboard side, nor any places repaired on that side, that I know of; and I would have noticed if there had been any; I was there all the time when work was being done. The bark laid in shore, altogether, not more than 16 days, including Sundays; no work was done Sundays. The second mate, Nugent, was there, and had charge of the bark. The captain was down 4 or 5 times. The metal taken off the "Grapeshot" was in one or two places worn, and a little chafed and torn; but it was
not necessary to heave down more than to patch it, or put
61 another metal in such places. There was not any necessity
for stripping off the old metal. The metal on the bark did not generally appear to be much worn or chaffed, except in the places I have mentioned.

After it was taken off it averaged, on being weighed, more than 4 lbs. per sheet; much of it was washed, and a great deal was in scraps after it was stripped off.

It was smuggled off in boats to the bark "Morning Star," Captain Close, that sailed in March, for New Orleans. All the repairs to the bark, in Rio, in any degree necessary to have been made, could have been made without heaving her down; and they ought not to have cost one hundred dollars. Nothing had occurred to make it necessary to heave her down and strip off the old metal to examine her bottom. I was on board the bark on all her voyages, and present all the time the repairs (as they were called) were being done. I do
not regard the metal put on her as but very little, if any, bet-
62 ter than that taken off. We left Rio for New Orleans April
17, 1858. We laid below some days in the harbor. We

finished all the work on the bark before or by the first week in April, and commenced loading on the 8th or 10th; finished loading on the 11th or 12th April. In stating the time the bark laid in shore at 17 days, I included all the time she so laid before we commenced getting ready on the Monday I have mentioned, and the time she so laid after we finished repairs on the second Tuesday or Wednesday following. Hanah and McLennan's people were engaged at work on the bark during that time (leaving out two Sundays) but 14 or 15 days.

Philip Myers, to the 12th interrogatory, answers: I would answer further than I have already done, that I do not know what the old metal cost per pound in Rio, and I cannot estimate exactly how much was put on the bark in the place of that taken off.

63 The workmen employed on the bark, besides the crew, were a gang of niggers, under a Portuguese boss. I do not think they worked a week in all. The crew helped, and all worked together, except the Portuguese boss, who did not do much, except oversee the niggers, and not much of that. The niggers were very indifferent and thrashy workmen, and knew but little about their business. I do not know how much their wages amounted to; but I do not believe that all the cost of all the work done on the bark (excluding the cost of the metal put on her) could, justly and honestly, possibly have amounted to six hundred dollars at the most, and indeed not so much. If the bark is hove down or taken out and examined, the facts respecting the metal taken off from her and that put on will appear to be as I have stated, by comparing the position of both now on, together. The best of the pieces of the metal put on were put along the light water-line, where it could be seen.

64 I declare on my oath that I believe the charge for nine thousand seven hundred and sixty seven dollars and forty-five cents for repairs and provisions a fraud. I have no idea how it is made out; but I have no doubt, if I could expect the items, I could detect the fraud. I am acquainted, in some decree, with repairing vessels, and have worked at my trade about vessels in Brooklyn and New York yards, and I think I can judge fairly of the general costs of doing such jobs. The bark measures only about 350 tons; and to strip off her copper, scrape her bottom, and caulked her, and if a few graving pieces were wanted, to put them in, and to recopper her, (exclusive of the copper,) would not cost in Brooklyn or New York, at the outside, over \$200; and with a floating dock, it could have been done in two days. No such sum as \$9,767 45 was justly and honestly paid for the work done; and metal, and materials, and provisions, all included, not, in my opinion, anything near one fifth that sum.

65 Herman Fisher, to the 12th interrogatory, answers: I do not, except from hearsay. I have heard that John C. Eilers, or Islers, and Philip Myers, who came in the bark from Rio to New Orleans, and who where both on board of her all the time I was, say the metal was stripped off of her, and some old second-handed taken from off a ship at Rio and put on in its place; but they have both

given in their evidence in this case. I do not believe, from what I saw of the bark in January, 1858, and from what I know of her, that anything of this kind was admissible, much less necessary. I discovered no injury in January, 1858, to her or to her copper, and the crew reported a pleasant passage. It was, I feel satisfied, all a fraudulent sham, not in any degree necessary to enable the bark to go to New Orleans, or anywhere in the United States, with safety. I should not have felt in any decree afraid to have gone around the Horn in her in January. Captain Clark, two months and a
66 half before, wanted to go to Africa, and to the East Indies, and to China, and around the Horn with her, and I did not hear of any damage she had suffered since that time.

Charles Hillman, to the 12th interrogatory, answers: She was hove down and her metal stripped off, and some old second-handed metal, taken off the ship "Western Continent," I believe, put in its place. Hanah and McLennan had stripped off this metal from the "Western Continent," and it lay in their yard and was brought to the bark by Nugent and Eilers, I think, who counted it and weighed it. The metal put on, I think, was not a bit better than that stripped off the bark; it was worn and not smooth and full of old nail holes; and after it was put on the bark; I do not think she was as good as she was before. I saw no graving pieces but one put in the bark's bottom, and there was a little piece of plank put under her counter,
67 and a piece put on her shoe or keel, and that was all the carpenter's work Hanah and McLennans did on board that I know of, and these repairs were not needed at Rio. This was my judgment then and is so now, and I knew the condition of the vessel. I said at the time these repairs were useless and unnecssary, and so was the stripping off the copper and putting the old copper on in its place. I said then they were not necessary to send her round the Horn even. I believed from all I saw there going on that the whole business was a fraud, cooked up by the captain, Esling and Alvaranges, Hanah and McLennan, Captain Close of the "Morning Star," Rostrom, Dutton & Co., who paid the bills, and others; the crew talked a good deal about it at the time. I think from what I saw and heard that Captain Edward R. Close, of the "Morning Star" was in it, and I have no doubt that his bark was burnt on purpose, and so other persons at Rio believed when he came back.
68 Close and Captain Clark were together a good deal, and very thick, and trading ashore at auctions. I cannot state all the particulars asked of me as to the number of workmen, and days and times, but there was a gang of niggers, and a white Portuguesse boss. Most of the workmen were niggers, and they were not of much account. The crew all worked. Excepting the purchase-money for the copper or metal put on, all that was done, stripping her, scraping her, and putting in the copper, ought not to have cost over six hundred dollars at most at Rio; I don't know what the copper cost; it was not any better than that stripped off. If the latter had been taken off carefully it would have answered to put on again, just as well as the old sheets of the "Western Continent." Hanah and McLennan's

did the repairs, as they were called. The captain was not down but once or twice while the vessel was being hove down and repaired.

69 It was well understood that the vessel was to be stripped and copper put on her before she was hove down. It was talked of, and the copper put on her was some of it picked out before. From all I saw and heard of the doings of Hanah and McLennan's, I am satisfied they were combined with the captain in the fraud.

Their bill, a copy of which has been shown to me, is No. 1, Exhibit A, No. 1, and also has been examined by me, and I regard it as a piece of scandalous swindling, and that it has been made up to cheat Mr. Law.

Interrogatory XIII°. Do you know whether or not the master, Joseph S. Clark, received the proceeds of two cargoes of salt carried by said bark into Rio Janeiro, in the [the] year 1857, or since? and if so, state the quantity of salt, price, to whom sold, and amount received, as nearly as you can.

70 John C. Eilers, to the thirteenth interrogatory, answers: I do not know who received the proceeds of said cargoes, except from hearsay. The captain often said that he had made money on both cargoes of salt, though the last he said had fallen short of the measurement. I cannot state the quantities or prices of either cargo of salt with any certainty or exactness, nor to whom sold, nor the amount received. In fact, all I know of the prices and sales, or who sold it, is hearsay and what was talked of on board, and if I repeated it error might be caused thereby.

Philip Myers, to the thirteenth interrogatory, answers: The captain had, I suppose, at Rio, the profits of the first cargo of salt brought from Ivaca and the Isle de Sal, and sold in Rio, in August; and the profits of the second cargo brought to Rio from the Isle de Sal, in January.

71 Herman Fisher, to the thirteenth interrogatory, answers: I know nothing further on this point than I have already stated in answer to the different interrogatories, and more particularly to the fourth; and that will not be considered positive, I suppose, even as to the first cargo of salt. As to the proceeds of the second cargo of I know nothing of it whatever. I suppose Captain Clark received the proceeds of both, of course.

Charles Hillman, to the thirteenth interrogatory, answers: I cannot answer as to this.

Interrogatory XIV°. Where did said master, Clark, reside in Rio Janeiro? State fully, as nearly as you know.

72 John C. Eilers, to the 14th interrogatory, answers: The captain resided, I believe, while at Rio, both voyages, at Eslings and Alvarengas, (ship chandlers,) at whose house one or two other captains boarded. The house was over their store, in the Rua Fresca. He got dissatified with them, and bought some chandlery and other things of Hobbs and other ship chandlers, and at other stores, and he went for a while to board at San Raza Hill, where he stayed some time. This was after the last voyage to Rio from Cape de Verd Islands. He however returned to them again.

Philip Myers, to the 14th interrogatory, answers: He resided most of his time when ashore at Esling and Alvarengas; part of the time he was at Raza Hill.

Herman Fisher, to the 14th interrogatory, answers: I believe most of the time with Esling and Alvarenges. I speak only of the months of August, September, and October, 1857. I don't know where he stayed in 1858.

73 Charles Hillman, to the 14th interrogatory, answers: I believe most of the time, both voyages, at Esling and Alvarenges.

Interrogatory XV°. Do you know what disposition said Clark made of any freights received, or of the proceeds of the cargoes of said barque, or any of said cargoes? If so, state fully.

John C. Eilers, to the 15th interrogatory, answers: I do not. He was most all the time ashore at Rio, and dressed pretty well, and was about a good deal, and must, of course, have spent some money. He was quite intimate with U. S. consul, and Captain Edward Close, of the bark "Morning Star." All three were a good deal together. The crew of the Grapeshot fixed up a yacht, said to be the consul's. He had boat races at Rio, once while first there, and twice whilt there the second time; and the captain had a boat in every time. 74

Philip Myers, to the 15th interrogatory, answers: I suppose he used those proceeds in speculations at Rio, as he was trading a good deal, and he said at the Isle de Sal that he had no money. Of course, I don't know positively. Captain Close and him were swapping and trafficking a good deal in ship chandlery and stores, and other things, and so were other captains of vessels at Rio.

Herman Fisher, to the 15th interrogatory, answers: I do not. He was dealing and trading a good deal at Rio ashore, in the fall of 1857. Captain Close and him were pretty thick. I mean Captain Close, of the bark "Morning Star." They seemed to have a good deal trafficking. A good many captains, specially at Rio, sometimes sold provisions, stores, and things belonging 75 to their own vessels to raise money for their own spending, and then buy other provisions and things, and have the last charged to the vessels and owners. I have known instances of this. Sometimes they swap stores and give receipts to each other, as if they had made purchases for the ship, and paid for them. As I heard Captain Clark was out of money at the Isle de Sal, in Febr'y, 1857, and drew on Mr. Law to pay for part of the salt he bought there, I suppose he was trading at Rio, in 1857, on the proceeds of the first cargo of salt. I considered from his statements, and my knowledge of the freight he got at Constantinople, and which he brought on board, as I have stated in my deposition above, and which must have amounted to about $2,000 at least, and as I knew he did not expend but little for the bark, either at Constantinople, or Malta, at Ivaca, at Malaga, or at Isle de Sal, or at Rio, in 1857; that if he was 76 really out of money, as he said he was, at the Isle de Sal, in July, 1857, he must have made some remittance home or elsewhere, for I never heard of his being addicted to gambling. He bragged a good deal at Rio, in the fall of 1857, of the profits he had made on the salt.

Charles Hillman, to the 15th interrogatory, answers: I do not know, except to buy the salt, and spend some at Rio in speculating.

Interrogatory XVI°. What number of persons were kept employed on said barque whilst in Rio Janeiro, in January, February, and March, 1858? State fully.

John C. Eilers, to the 16th interrogatory, answers: The
77 captain stayed ashore. All the crew of the barque that came
into Rio in her on her second voyage remained on board of her until sent to the hospital or discharged, or till they left the bark. A list annexed to my answer to the 20th interrogatory will show their names, and who was sent to the hospital or discharged or left. Besides those persons, there was Harrison Nugent, 2d mate, who came on board in the month of February, 1858, as will be stated in said list. The whole number, at diffrent times in said months was, I believe, eleven, as said list will show, but that number was not all on board at any one time.

Philip Myers, to the 16th interrogatory, answers: I have seen the statement marked Exhibit A, annexed to John C. Eilers' deposition, taken in this case November 26th, 1858, and it shows all that I can
state. It has been read to me carefully by the commissioner,
78 and I have examined it for myself, and I believe it to be cor-
rect. I have had shown to me documents marked "Exhibits V, V," Nos. 1, 2, 3, and 4, annexed to John C. Eilers' deposition, being as follws, viz: No. 1, a certified duplicate of the hospital money return, filed by Captain Clark in the New Orleans custom-house, June 8th, 1858, purporting to be a true account of every seaman employed on the "Grapeshot," from 4th February, 1857, the date she was last entered at New York, till 8th of June, 1858, &c. This account is false. It omits the names of 16 or 17 persons who were so employed, as will be seen by a comparison of it with the other documents, Nos. 2, 3, and 4, annexed to said Exhibits V, V, and with the statement marked Exhibit A, before referred to. No. 2, a certified copy of the list of crew (role de equipage,) when the barque sailed from New York, in February, 1857, certified by the col-
lector of New Orleans, from the original file in the custom-
79 house, New Orleans—this omits the name of the nigger cook,
who was first shipped in New York, and who cleared out on the Saturday or Sunday before we went to sea. We left the 9th, and he ran away either February 7th or 8th. It also omits the name of the white man, a Halifax man, who was shipped after the nigger ran off, and which white man left the barque at Constantinople, after a row with the captain, who had him put in jail. I don't recollect the name of this man. The bill of the consul at Constantinople, Exhibit K K, No. 9, shows the cook was imprisoned. No. 3, a certified copy of list of men shipped in Rio, October 31st, 1857, from original certificate of Robert G. Scott, jr., U. S. consul at Rio, dated October 31st, 1857, which was filed by Captain Clark in New Orleans custom-house, and is certified by collector at New Orleans.

No. 4, a like certified copy of list of crew shipped at Rio, April 11th, 1858, from similar originals to No. 3, dated April 10th, 1858,
80 and certified in like manner. Captain Clark imposed upon the New Orleans boarding officer as to his crew, and also upon the custom-house. The boarding officer's certificate, dates June the 4th, 1858, on the list of the crews, shows that Clark imposed upon him, and the hospital money account shows that he imposed upon the custom-house. Neither the names of the nigger cook, who first shipped, nor that of the Halifax man, who shipped as cook after the nigger ran away, are to be found in any of the said papers. The last nigger cook's name was Wm. Henry, or Sam. Price, or Pierce. We shipped at Constantinople Mr. Sharp, as first mate, and Herman Fisher, Jack Moore, and a Portuguese or Italian called Little Jim, or James Faroni, and a Danish boy named George Haason, and Price or Piece, making in all six, the names of none of whom are to be found in any of the said papers, as far as I can ascertain. These papers do not state who left, who died, or who was discharged,
81 and the hospital money returned states that several persons who left the barque at Constantinople, and the man who was lost at sea, in 1857, in all six persons, were employed on board till June 8th, 1858, and it omits to name, as I have said, 16 (or, including the first nigger cook who ran away in New York, 17) who were employed on board the barque between February 4th, 1857, and June 8th, 1858. Henry Price or Pierce's name is on the pay list as cook, paid off by J. O. Woodruff & Co., June 15th, 1858, for twelve months' twenty-six days' service on board.

Herman Fisher, to the 16th interrogatory, answers: I cannot answer; I did not belong on board these months.

Charles Hillman, to the 16th interrogatory, answers: I was in the hospital and several of the others who had not left, and until March; I expect there were not more than three or four on board at
82 any one time.

Interrogatory XVII°. Do you know of said Master Clark having made any protest respecting any injury sustained by said barque on any of her voyages or damage to cargoes, or respecting said barque in anywise at any time? If so, when, where, before whom, &c.

John C. Eilers, to the 17th interrogatory, answers: I never heard of any protest being made, extended, or made by Captain Clark from the time we left New York till we arrived at New Orleans, and I don't know any cause for any protest, as no injury or damage was sustained by said bark on any of said voyages that I was aware of calling for it. There was certainly none from leaking.

Philip Myers, to the 17th interrogatory, answers: I did not
83 hear anything at Rio either before the work was done on the bark, or after of any protest being made by Captain Clark after he got back to Rio from Isle de Sal in January, and before he left Rio for New Orleans in April; and as the bark had not, on her voyage from Rio to Isle de Sal and back, met with any accident, or leaked or encountered any severe gale, or her corgo been damaged,

nothing had occurred to protest about that I know of; I never heard of any being made by Captain Clarke.

Herman Fisher, to the 17th interrogatory, answers: I never heard of any protest being made or extended whilst I belonged to the barque.

Charles Hillman, to the 17th interrogatory, answers: I do not know; I never heard of any protest at any time.

Interrogatory XVIII°. Do you know whether any survey
84 was made of said vessel to ascertain what repairs were necessary? and if so, by whom, or what authority made? State fully.

John C. Eilers, to the 18th interrogatory, answers: I never heard of any survey whatever being made, and do not believe that there was any held. If there had been any such survey made by honest, disinterested, and competent men, I have no doubt they would have reported that no repairs were advisable to be made to said bark at Rio, beyond what I have stated, and which would not have amounted to $100. If any survey was made, it was made secretly, as I was constantly on board, and a full and proper examination could not have been openly made without myself and others of the crew knowing it; all on board were astonished when we heard that the bark was to be hove down and stripped, and the old metal from the ship "Western Continent" to be put on her in lieu of the metal then on her. We
85 talked about it, and all considered it entirely unnecssary, and
did not know what to make of it; some suspected it was done to fix her to go around the Horn or to China, or to Calcutta or to the coast of Africa, as had been talked of.

Philip Myers, to the 18th interrogatory, answers: I did not hear anything at Rio of any survey being called on the bark to ascertain if she needed any repairs either before or after the metal was stripped off from her, or at any time; and if there was any survey made it must have been done very privately, or ashore, or I should have heard something about it; I do not know of any having been made, and I think I would have known of it if it was made.

Herman Fisher, to the 18th interrogatory, answers: I do not know of any survey being had of the barque at any time; whilst I was attached to her there was nothing to call for it.

86 Chas. Hillman, to the 18th interrogatory, answers: I never heard or knew of any survey at any time; I think I should have known if any had been held.

Interrogatory XIX°. What amount of your wages have you received since you first shipped, and by whom was it paid, and when, and where? State fully.

John C. Eilers, to the 19th interrogatory, answers: Woodruff & Co., of New Orleans, agents of Mr. Law, paid me $143 71-100. The captain said I had received advances and payments in cash and articles, and for hospital money, amounting to $109 30-100; my whole wages were $253. The captain's charges were incorrect. My account credited him with only $91, and $3 20-100 hospital

money; in all $94 20-100. But I was forced to put up with
87 the amount paid me, or go to law, and so I let it go.

Phillip Myers, to the 19th interrogatory, answers: I shipped February 5th, 1857, and was discharged at New Orleans, June 15th, 1858, being 16 months and ten days, at $12 per month, which would be $196. I was only allowed 15 months and 26 days, $190 40, and was paid in New Orleans by I. O. Woodruff & Co. $111 55, the balance, Captain Clark said was due me; I signed a receipt but was not satisfied that I got my full due by several dollars; the captain never paid me in money and articles the sum of $78 85, as he stated; but I gave up rather than have a law.

Herman Fisher, to the 19th interrogatory, answers: When I became fully satisfied that the captain did not intend to return to the United States, but intended to go to Buenos Ayres, or Calcutta, or the Cape
of Good Hope, or to the west coast of South America, or to
88 engage in the slave trade, I resolved to quit the barque. The
general talk at Rio Janeiro was about the bark "Grapeshot" and the "Morning Star," staying there unnecessarily so long, and about the captain's declining good freight to the United States; and it was generally suspected from their conduct, that they had some scheme on hand. I first went to Mr. Scott, the consul, but he said he could not aid me. I then went to the American minister, and he told me I had a right to leave the barque, and was very kind and good to me, but said he could not interfere with the consul. Captain Clarke then refused to pay me, or even enough to get some clothes I needed, or anything, except a little change; and the barque and Captain Clark still owes me about $45; but I had a school-mate and other friends in Rio, and I resolved to run the risk of losing my wages and quit, rather than be obliged to go to the places spoken of,
or to engage in the slave trade; besides I did not want to sail
89 with a captain who was so unprincipled as to boast of his in-
tentions to cheat his owners, and who deceived me when I shipped, in representations as to where he was going. I make out $45 due me, thus: I shipped at Constantinople, April 28, 1857, at $12 80 per month; I left October 26th, 1857, 5 months and 28 days, at said wages is about $74 00. I received in small sums and articles less then $29 00. This deducted, leaves $45 00. I have a right, Ithink, to claim in addition three months' wages, which amounts to $37 50, making in all $82 50, besides interest, according to law. I believe the law of Congress allows me this addition, as I did not ship for Buenos Ayres, or for Rio, but for New York, and as the captain had been when I quit October 26th, 1857, at Rio, been laying there since about the first of August, idle, and showed plainly that he did not intend to come home to New York. He had no right to go to the Isle de Sal; but if he had come home to New York from Rio, I would have stayed by the
barque. I claim all that is due me, and have employed a
90 lawyer to file my claim for my wages in this case, and I want the
shipping articles and the log-book produced, to show that what I state in my deposition respecting Captain Clark's intention to go on a voyage to Africa, and in the slave trade, from Rio about the time

I quit the barque, and which was one of the causes for my leaving the barque. I annex hereto, marked Exhibit O O, No. 17, an original clearance signed by Robert G. Scott, jr., United States consul at Rio for the barque, with said Clark as master, from Rio to the Cape of Good Hope, and which is dated 29th of October, 1857. This paper has been given to me by Mr. Law, to annex to this deposition, and he states that he found it amongst the papers left with him as I have before stated, by Captain Clark, in August or September, 1858; and he states also that he has not seen the log-book of the barque, and that Captain Clarke refused to give it up to him. Mr. Law, also
states that he cannot pay my arrears of wages, as I am a wit-
91 ness in this case, but has informed me I had better file my
petition to the court for my wages.

Charles Hillman, to the 19th interrogatory, answers: Woodruff & Co., of New Orleans, paid me, I think $150 55-100, and the captain paid me altogether, in cash and articles, during all the voyages, not exceeding $75, and he charged me $152 45. He charged me for a riffle he broke in a row with some of the crew whilst I was second mate; I was not in the scrape; the rifle was one of Mr. Law's on board; the captain gave some of the muskets and rifles away, and he sold some in Rio. As much as 57 of the captain's charges besides this were false. He would not allow me second mate's wages, at $25 per month, while I acted as second mate 5 months, but only the $16 I was
to have as a seaman: I think he is a very dishonest and bad man.

92 Interrogatory XX°. Do you know what has become of any
of the crew of said barque when she left New York in February, 1857, who are not now on board of her, or any who sailed in her in 1857 or 1858, not now in her? if so, state names, &c., fully, and who have died within your knowledge, and when?

John C. Eilers, to the 20th interrogatory, answers: I have seen and examined the list hereto annexed, (marked Exhibit A.) It states, as near as I can remember the names of all on board of her from the time she left New York till she arrived at New Orleans, and her cargo was discharged. The three last names on said list were those by which the sailors who came on board were shipped, but the names were those, I believe, of three other sailors who had shipped previously, and ran away before the bark sailed. It is not unusual for those who ship men, and for masters and sailors to put wrong names in the articles. The name of Martinez, I believe, was Hanson; I heard it reported
that he got the wages, (about $80,) of the Danish boy, who
93 died at Rio, by answering to his name when we were paid off
at New Orleans, instead of his own wages, about $10. But I do not know if this be true or not. Nugent came on board in February and stayed, but did not ship for New Orleans till April.

Philip Myers, to the 20th interrogatory, answers: Further than I have already stated in the 16th interrogatory, I answer: I have seen the names in the list of the crews taken from the custom-house. I recognize the name of Mr. Allen, 1st mate. He left the barque at Constantinople and went on board, as I understood, an English steamer there. I think he was a down-easter. I recognize also the name of Mr. Demcose, 2d mate. He left at Constantinople, and

went, I belive, to London in an English brig. I do not know where he belonged. I suppose my name was intended for the next, but it was spelled wrong. I staid by the barque all the time till
94 discharged and paid off at New Orleans. The person named John C. Eilers in the list, I take it is the man we called Ilees, and sometimes Johnson, on board. He staid by the barque till discharged the same time I was, and I understood stopped in that port afterwards. I do not recognize the person called "James Ma. Chines" in the list, but I suppose it was meant for the man "Mike" on board the barque, and who was lost overboard on the voyage to Constantinople. The person called "Charles Wellman," in the list, I think is the same we called "Charles Hillman" on board, and who was made second mate at Constantinople, after Deemen left, and who acted as 2d mate till we got to Rio, when on account of some trouble with the captain he went before the mast again. He staid by the barque till discharged in New Orleans, and I heard went to Liverpool, England, where he is married. "William Back" left the barque in Constantinople, and so did another man we called "Jack" on board, who I suppose is meant by the name "Cyrus Gay-
95 cidt," but I can't say as to this. "George Cook" stuck till she came to New Orleans, and after his discharge, I understood, went to Liverpool, but I do not know by what vessel. I believe his home is in England. The cook shipped in New York, ran away on the Sunday before we left, and the captain got another. I do not know his name. He left in Constantinople. He was a white man, about 28 years of age, and said he belonged to Halifax. He is not down on the list. Sailors do not care much what names are put in the list, and they are often wrong, and they often ship by false names. The captain shipped at Constantinople instead of the mate, who left, "Mr. Ballard Sharp" as 1st mate, and made Hillman 2d mate, and he shipped besides Herman Fisher (who I have seen several times in New York and Brooklyn since I got back,) as a seaman, and who lives in New York, and he also shipped a man named Jack Moore, who hailed from Sandusky or Buffalo, and a man who hailed from Maine, who had a Spanish, or Portuguese, or Italian
96 name, that I have forgot, but who was called on board "Little Jim," and also a boy hailing from Elismore, Denmark, named "George Haame," and likewise a nigger cook whose name, I think, was "Sam Price," or "Henry Piece." The captain shipped at Rio for the voyage to Isle de Sal, as 1st mate, a man whose name, I think, was Stalls. He quit at Rio soon after we had discharged. The man who shipped as 2d mate I cannot recollect the name of. He left before we commenced discharging, as he had lost two fingers by an accident at the Isle. Three seamen were shipped besides; one we called Bill Smith, the Furlander, I believe, another named Peter, and another named Brown. I don't know how they are put down on the shipping papers or crew-list. These are the names we called them by on board. Smith ran away after we discharged. He said he believed the next voyage would be after niggers, and he did not intend to go. Peter died in the hospital at Rio. He was took from

97 the barque. Brown was sick with swelled feet, and was
sent to the hospital and was discharged by the captain. The
Danish boy Hanson died in the hospital at Rio. The nigger cook
staid on board till the barque arrived at New Orleans. What became
of him I do not know. I heard they would not let him go
ashore. When we sailed from Rio for New Orleans, the crew consisted
of ten men besides the captain. A man named Comegys was
first mate. He shipped at Rio three or four days before we sailed.
He staid by the ship in New Orleans. He belonged to Brooklyn.
The second mate was named Nugent. He left when I did. He was
sick, and said he would stay awhile in New Orleans, and go to the hospital.
I think he was an Englishman. He shipped some days before
the barque was done at Rio. Charles Hillman, and Ilers,
George Cook, myself, and two Dutch sailors shipped in Rio the morning
we sailed, whose names I cannot tell, and I don't know where
they went when discharged, and an English sailor named Bill
98 Smith shipped same time, and who went to England from New
Orleans, and the nigger cook who staid on board after he was
paid off, were the residue of the crew from Rio to New Orleans.

Herman Fisher, to the 20th interrogatory, answers: I saw John C.
Eilers and Philip Myer in New York, in August and November,
1858, and Philip Myers is now here with me before the commissioner.
Myers has since been at sea and has returned. Eilers has left this
port on a voyage, I believe, as mate or second mate of the ship "Fanny
Forrester." I found out they were here, being requested by Mr.
Law to keep a lookout for any of the crew of the bark that came to
New York. I found out also that John Linn, the second mate of the
bark "Morning Star," was here. I got all of them to go to Mr.
Law's office, to tell him about what they knew. Myers lives in
Brooklyn when not at sea. I have seen him often the past fall and
summer. I have understood that John and Hiram Nugent, the
99 2d mate of the "Grapeshot," on her voyage from Rio to New
Orleans is in New York, or has been lately, but I have not
seen him. I can testify to the identity of Eilers, or Ilers, and Myers,
for they were both on board the "Grapeshot" where I was. I also
knew Linn. All that I can state further to the interrogatory is, that
the first and second mate who came out from New York in the bark
to Constantinople, left her there. A new cook (a mulatto) was shipped
there in lieu of one who left, and two new men, myself and a
Danish boy, in lieu of some that left there, and a man the bark lost
overboard on the voyage from New York to that port. There were
two others of the seamen that shipped at Constantinople that left at
Rio Janeiro. They left for the same reasons I have already stated.
I believe they had wages due them when they left. One of these
men was named, I believe, Moore, and hailed from Sandusky, Ohio.
I don't remember the name of the other. He hailed from down
100 East, and had a name that seemed to me to be of Italian origin.
They wanted to return to the United States, and shipped on
the bark at Constantinople for that purpose. Moore came home on
the bark "Smallwood," for New York, and the other man went to

New Orleans in the barque "Leighton," as I believe. I left Rio about the 9th or 10th of January, 1858. I was persuaded by my friends to stay a few weeks, after I left the barque, and then it being so nearly the cold months, and as I had some affairs to arrange in England, I concluded to return to New York by the way of England, which I did do. I left Rio for London in the Swedish brig "Hedvig Charlotte," where I arrived May 3d, 1858, and from thence I sailed to New York, where I arrived on the 29th of June, 1858, in the ship "Great Republic." On my arrival I deemed it to be my duty, and under the advice of my lawyer to go and see Mr. Law, and tell him all I knew about the "Grapeshot," and try to get my wages. He told me the "Grapeshot" was seized in New
101 Orleans, and advised me to file my claim for wages there, which I have done.

Charles Hillman, to the 20th interrogatory, answers: I have answered this before, I think. I believe the list A, which I have referred to, is pretty generally right.

Interrogatory XXI°. Do you know anything else material to said George Law in said case? and in answer state if you are or are not about to go on a voyage to sea, &c.

(Signed) BONFORD, SINGLETON & CLARK,
Proctors for Claimants.

John C. Eilers, to the 21st interrogatory, answers: I am about to go on a voyage to sea. My occupation is that of a seaman, or mariner. My present residence I consider is, as I have stated, in New York city.

And in answer to that part of said 21st interrogatory, as to whether he knows anything else material to said George
102 Law in said case, he further answers and deposes that said Clark, the master of said bark "Grapeshot," whilst at Rio and when at sea, often talked of his purpose, if he could get a good lay, to go with said barque around the Horn, in the Pacific, or to Calcutta, or to China, to Buenos Ayres, or to Cape of Good Hope, or to engage in the Coolie trade. The bark was overhauled by Brazilian officers at Rio, about the cannon and small arms and ammunition she had on board, and upon suspicion of her being engaged in some illegal business, but she was released. Captain Clark staying so long at Rio, in the summer and fall of 1857, and winter and spring of 1858, and his refusal to take good freights to the United States from Rio during both times he laid there, and his general conduct at Rio was notorious, as such matters generally are in such places. I have seen and examined a certified copy of the general account of charges by Rostram, Dutton & Co. against the bark "Grapeshot," whilst at Rio, (from January 2nd, 1858, to April 5th, 1858,) dated
103 April 15th, 1850 [8,] the original of which appears to have been sworn to by Wm. Wright, before Mr. Scott, the U. S. consul at Rio, as per certificate dated 6th September, 1858, and filed by libellants in this cause, with certain interrogatories to witnesses at Rio, Nov. 8, 1858. I have also seen and examined and compared

with said certified copy, a letter-press copy of an account of the same firm against said bark, the aggregate amount of the footings being same as in the certified copy. Said letter-press copy is dated April 16, 1858, and is signed by said firm. A true copy is annexed hereto, marked Ex. B, and notes of some of the variances between said two accounts are in red ink in the margin. I have not seen any bills of the items or particulars of the first six charges in said certified copy of the general account, filed November 8th, 1858, and cannot, therefore, say as to said charges whether they are right or not. A copy and translation of the bill "labor, hire, loading outward cargo," are annexed, (Exhibit B.) It is for R. 121 600,
104 and also of Exhibit B, the "esterador acc't for lading same
cargo, r's 101 480. The correctness of the charge of R's 10 for clearance at consulate" can be ascertained by looking at the legal fee bill. The charge for "anchorage, dues, and port charges, r's 172 800," is, I think, wrong. The official bill of items and receipt, dated April 15th, 1858, a copy and translation of which are annexed, (Ex. C, No. 3,) shows it should be for r's 162 800 only. I cannot answer as to the consul's account for fees, and advances 100 @ Ex. 1,900 equals r's 190 000, as I have not seen any of the items. No "advances" are charged in the letter-press copy account, but "fees" only are mentioned. The next charge is, "cash advanced to captain"—cash, 2,256, 58,800; Mosand, 204; dresses, "220, 2,580, 58, 800." These two last items make r's 3,638 800, and that amount is stated in the letter-press copy, as "cash advanced captain," and the other items are not mentioned. I do not understand these items as
stated, as I have not seen any bills of particulars. In no port
105 that I have ever been in did I ever hear that it was by law
or by mercantil usage, allowed to charge a ship for "cssh paid captain," or others at his request, unless it was for ship's use. I don't know what "Mosand" refers to, nor what "dresses" certainly means; but no women were attached to the vessel, and we had no use for "dresses" on board. Copies and translations of "Fretes" bills are annexed (Ex. C, No. 4 and 5;) one No. 4 is for r's 19 000, and is for port-wine and brandy, &c., is charged correctly to the captain and not to the barque. It should not be in this account. I presume the other for r's 67 000 is right. I have seen George Hobbs' bill from January 2d, 1858, to April 10th, 1858, dated April 12th, 1858, for R. 186 760, copy annexed, (Ex. C, No. 6;) but I have never seen, and do not know of any other bills of his. The charge as to Hobbs, in the letter-press copy, is for one sum only, R. 350 280, but by the account filed it seems that besides said bill No. 6, there is one
for R. 163 520. The barque arrived at Rio, January 2d, and
106 left the port of Rio about April 17, 1858; and if such other
bill exists, it must be either for the time when the barque was in Rio, between August 1 and November 8, 1857, or after April 12th, and before she sailed. I do not think this entire charge is correct. I have examined the certified copy of "Esling & Alvarenges'" bill, called "Eslings," in said certified copy for R. 2,175 940, filed November 8, 1858, by libellants, from January 5, 1858, to and in-

cluding April 14th, 1858, and the receipt to which is dated April 16th, 1858, and receipted by them, and from my knowledge of the transactions at Rio respecting the barque, I am convinced the said account is false and fraudulent in many particulars. I will state some of the facts and reasons which cause me to believe this, hereafter. The charge in said account of Rostrom, Dutton & Co., filed as before stated for rating chronometer, R. 11 100, it appears by the copy of the bill annexed (Ex. C, No. 7) ought to have been for that service r's 10 000; and for repairing quadrants, r's 1 000; in all, r's
107 11 000. I believe the charge for "tow-boat in 60, out 80, and moving 20;" in all, r's 160 000, to be wrong. I have not seen any bill for this charge, but it was more than was charged in and out the first voyage in summer and fall of 1857. The bill, for which copy annexed, (Ex. C, No. 8,) was for towage from Fort to discharge, 20 000; from discharge to Basto's wharf, r's 20 000, and "towing out, r's 80 000;" in all, r's 120 000.

A copy of Doctor Santo's bill for drugs and medicines is annexed. (Exc. No. 9,) dated 15th April, 1858, I know nothing about it. There is a good deal of medicine charged in the other bills against the barque in January, 1858, and till she sailed. Those of the crew that were taken sick at Rio were sent ashore immediately to the hospital. The charge stated in the account filed "butcher's acc't. rs. 212 280," is stated in the letter-press copy to be "butchers acc't." Both are for same amount. A copy and bill of items for part of this sum
108 is annexed, (Exc. No. 10,) from March 26th to April 13th, 1858; the items and amounts thereof with dates are not given. The bill No. 10 is from 31st January, 1858, to and including March 26, and amounts only to rs.159 960, being rs.52 320, less than the the amount charged (rs. 212 280) in the account filed. A short general statement copy annexed (Ex. C. No. 11) states this amount from 31st January to 8th of April to be rs.191 580, and from 9th of April to the 13th of same month to be rs.20 800, but sums and dates to different items are not given. I do not think this entire charge is A copy of the bill for "beef acc't," Baldwin 88, Ex. a 2.000, correct. rs.176 000. 4 blls. beef @ $22, February 19th, is annexed. (Exhibit C, No. 12.) As to the charge in the account filed, "paid Captain Close rs. 193 130," a copy of a receipt therefor is annexed, (Ex. C, No. 13;) it purports to be for "balance due" bark "Morning Star" from the Grapeshot." I have not seen any account or bill showing any such
109 "balances" to be due or how it arose, and I do not believe it to be true, honest, or just. From what I know as to what occurred at Rio, connected with the barque and Captains Close and Clark, as well as to what did not occur, I have no doubt that this charge has been trumped up and is one of their fraudulent contrivances to cheat Mr. Law. I have seen other bills and receipts of Captain Close made against the barque, of which copies are annexed, (Ex. D, Nos. 7, 8, and 9,) every one of which I believe to be false and fraudulent in some particulars. I do not discover in any bills any credit to the "Grapeshot" for her old metal smuggled on board the "Morning Star," and which Captain Close claimed to be his, nor for the

difference in value between the fine boat Captain Clark let him have, (and in which he escaped when the "Morning Star" was burned at sea) and the old one he gave to Captain Clark. The transactions and dealings of these two captains with each other at Rio, and their conduct was mysterious, and created suspicion there with some.
110 I cannot say that I am fully convinced that the Morning Star
was purposely burned as I know nothing about it. The charge for advertising is, I presume, correct. In the letter-press copy it is stated to be advertising for bottomry. A copy of the order of Captain Clark on Rostram, Dutton & Co., in favor of stalls, the mate for $64 50 is annexed. (Ex. C, No. 15.) It is dated March 1st, 1858. As to the charge in the general account filed November 8th, 1858, of Rostrom, Dutton & Co., for carpenter's account, Hanah and McLennan's, Ropper, &c., caulking, &c., c. 13,065 260. I have carefully examined the certified copy of the bill of items filed same time, dated April 12th, 1858, and receipted April 15th, 1858. I have also seen and compared with said certified copy an original bill and receipt for same amount and nearly the same in its contents as said certified copy, and likewise another original bill and receipt for same amount and nearly the same in its contents as the other two, except that its date at the heading is April 13th, 1858, instead of April 12th, as the other two are dated. The variances between
111 these several bills are, I suppose, chiefly clerical, and are,
perhaps, of little consequence beyond exhibiting the carelessness and inaccuracy of said firm in their accounts. Some of these bills have any year, or month, or day stated to any of the different items other than the date at the head of each bill. I regard said bills as being not only unreasonable and exhorbitant as to prices charged for several articles, but in respect of quantities furnished and in respect of time charged for workmen, and for use of tackle and the like, and in respect of the number of workmen charged for, and amounts charged for as being, to every one acquainted with the subject, palpably false and fraudulent. I have before, in my answer to the 12th interrrogatory, deposed to what I know in relation to the repairs to the barque by said firm, and as to the old metal and nails furnished. I am satisfied that the charge for 907 sheets of yellow metal, weighing 6,281 lbs., is false and fraudulent as to the freight, and that the true weight ought not to exceed at most 5,442
112 lbs., or six pounds per sheet, and I am quite certain not
so much. The tonnage of the barque is only $345\frac{2}{95}$ tons, U. S. measurement, and it makes a vessel ton more than the British. The price charged for this metal is manifestly unreasonable. It ought not to have been, at the very outside, over 16 cents per lb. This would have made the metal cost about $870 72, and I think this would have been an extravagant large price for this old second-handed metal even at Rio. I do not know, and am not, and never have been satisfied that the whole 906 or 907 pieces or sheets counted and selected by Nugent and myself were all put on the barque. The sheets taken off the barque were as large as those put on, and that we had over 800 of them I am quite certain. I think one-third of them were torn

into scraps in stripping them off. The charge for copper or composition nails is incorrect and over states more than 100 per cent. the
quantity actually used or furnished the barque. The quan-
113 tity used did not exceed one pound per sheet of metal,
and yet 1,656 are charged. The nails used were large, new, and good, but the price charged is grossly extravagant. I have deposed in my answer to the 13th interrogatory that one small graving piece was used on the barque in the repairs by said firm, and one small piece of plank for repairs under her counter, and a large piece on her shoe or keel, and that those three pieces were all that I could recollect; I am pretty certain on this point. But in their bills said firm charge "one large plank panolea timber, rs. 90 000, one stick panolea for keel, rs. 150 5, planks panolea graving pieces, rs. 425 000, 15 pine boards, various sizes, rs. 37,500, 3 hard-wood boards, rs. 36,000, 2 planks of panoleas, cut up for ship's stores, wedges, &c., @ 30, rs. 60,000, and four small spars, cut up for shoes to heels of masts, house, &c., 28, rs. 112,000 in all rs. .

The bark had some lumber and planks on board before, obtained
from other persons. She had all she needed, even for the
114 repairs actually made, except the piece put on her shoe or
keel, which I have before mentioned, and I do not believe that any of these charges are just and correct in every respect. The three pieces used which I have mentioned, and the two last articles or charges may, however, be right, except as to prices; but I do not certainly know that said firm furnished any of those pieces, except the piece for the shoe or keel, for seeing them charged in their accounts has not much weight with me. I know that the plank, boards, hard wood, and other lumber charged were not all used in the repairs. There was no necessity for their being used, as I have before stated, and they were not furnished to the barque. I regard this bill as a very great imposition. The bill of Esling and Alvaranges, filed by libellants for rs. 2,105.940, is, as I have before stated, false and fraudulent in many particulars. I state my settled convictions, and I will give the reasons therefore. Besides the cer-
tified copy of their bill, filed November 8th, 1858, I have seen
115 and examined, and carefully compared with said certified
copy, a bill from said firm, having an engraved heading, "Rio de Janeiro, 185 ," "Bought of Esling and Alvaranges, No. 7 Rua Tresca." The blanks for the name and date of the purchaser, in the heading, are not filled up. The bill commences with an item, "Amount brought forward, R. 367.600; and the next item is February 8th, 1858, "For 5 gallons, *a* 800rs, 4.000;" and the charges in the bill extend to and include April 11th, 1858, and the bill is receipted for said firm at Rio, 17th April, 1858, po "R. P. Potsch," and the total amount is r's1,121.850. Many of the items in this bill (they are all on or after February 8) are same date, same amount, and same articles as are charged in the certified copy. Charges amounting to r's412.700 in the certified copy are not found in the other bill. These are great discrepancies between the bills, in the quantities and amounts of sundry charges, and variances in charges that

ought obviously to be the same. These discrepancies and variances
116 are of such character that they cannot, I think, be
properly regarded as mere clerical errors. Many offered to
my mind, not merely good grounds for suspicion of intentional fraud
by said firm, and of collussion between the same and Captain Clark
to cheat Mr. Law, but I cannot conjecture how some of the discrepances
between these bills can be explained and reconciled consistently
with an honest purpose by them, and I consider them as manifest
and conclusive proof of such fraudulent collussion. Both bills
are receipted by or for said firm, and the bill for r's1,121.850 (according
to said certified copy of the bill for r's2,175.940) is receipted
two days after the latter. In the bill for r's1,121.850, there are
charges amounting to r's67.540 for articles not in the other (of which
r's26.060 is prior, and r's41.480 subsequent to April 14.) The difference
of the respective aggregates of said bills, as above stated, is
r's1,054.090. The amount of the charges in the certified
117 copy prior to the item Febr'y 8th, 5 galls. tar, is r's947.800.
In the other bill, "amount brought forward" up to said item
is, as I have before stated, r's347.600. The difference, prior to said
item, is, therefore, r's580.200. How this difference arises I cannot
say, as I have not seen the bill from which said amount, r's367.600
was "brought forward." Excluding from the bill for r's1,121.850,
all charges therein, including and after the item "5 galls. of tar,"
not contained in the other bill, the difference between the aggregates
of the charges, after said item "5 galls. of tar," would be r's1,054.310,
that of the certified copy being so much the most. It seems apparent to
me that many of the charges in the bill for r's2,175.940, according to
said certified copy, and which are not to be found in the other bills,
have been falsely and fraudulently interpolated to swell the amount
of said bill; and also that many of the quantities and amounts, and
prices of charges in said certified copy have been fraudulently altered
and changed from the original charge, and increased for the
118 same object and purpose. Annexed hereto, marked "Exhibit
E," is a statement of several of such charges, and of the discrepances
and variances, and the alterations and charges I have referred to,
and as to which charges I have particularly examined and compared
both bills. I believe this statement to be correct. It contains notes to
eachitem stating my belief in regard to such item. That statement
shows, I think, the modes by which most of the discrepancy between
the two bills were created. The bill for *r*.1,121.850 was, I believe,
the original bill, and is the least incorrect; and the items in the other
bill, noted in the statement, were interpolated or changed, or altered
and increased as therein stated, to augment said bill to said sum of
r.2,195.940. It may be that said firm and Captain Clark, subsequent
to the making of said bill for *r*.2,195.940 (according to said
certified copy) collusively settled the same by compounding said
amount for *r*.1,121.800, the total of the other bill, and agreed to receipt
both, and still charge the largest bill against the bark
119 and against Mr. Law. I cannot conceive of any other than
one of the other of these two ways by which the variances

between the two may be accounted for. If the aggregates of the different quantities and amounts of the different articles charged in the bills against the "Grapeshot," whilst at Rio in January, February, March, and April, 1858, included in Rostrom, Dutton & Co. accounts are ascertained, it will be manifest that if these aggregate quantities had all been furnished for the barque, they would have been an extravagant and unreasonable supply for her whilst in port and for the voyage from Rio to New Orleans. No necessity existed for them to such amounts, either whilst she was at Rio, or for her voyage to New Orleans, or both together.

All the supplies necessary for the voyage from Rio to New Orleans ought not to have exceeded in cost at Rio the sum of $200. The articles in several of the bills are greatly overcharged as to prices, and specially in Esling & Alvaranges's bill, according to the certified
copy of it, and in Hanah & McLennan's bill, according to the
120 certified copy of it. In Esling & Alvaranges's bill for R.
1,121-850, some of the prices are, I think, exorbitant. I know that some of their charges for sugar in their other bill are false. No such quantities of sugar as those charged in that bill were received for the use of the barque from that firm. In addition to the proof of the falsity of the two charges in the certified copy, one for "100 lbs. brown sugar, May (April) 12," and the other for "50 lbs. refined sugar, April 14th," afforded by the bill for R. 1,121-850, and in addition to like proof of the falsity of the charge in said certified copy for "40 gals. molasses," same day. I am certain that no such quantities of sugar, or such quantity of molasses were received for the use of the barque, from that firm in March or April, 1858, or whilst said barque was at Rio in 1858; and I do not believe all the sugar and molasses received on board the barque from every source during the 3½ months she laid at Rio in 1858, amounted to
150 lbs. of sugar, or 40 gals. molasses. On our voyage from
121 Rio to New Orleans we stopped at the Grand Caymen, in the
Caribbean Sea, and obtained some molasses and fire-wood, as we were out. We had not over 5 gallons of molasses on hand when we sailed from Rio. We had but little sugar when we sailed, and the cabin, it was said, was out in less than 5 weeks, and before we reached the Caribbean Sea; and from the first we used none forward, except a little in our grog. I am satisfied that many of the other charges in said certified copy were fraudulently manufactured, and some of the charges in the bill for R. 1,121-850 are likewise incorrect. I have no doubt that the charges in the certified copy, anterior to the item of "5 galls. of tar," are equally as false and fraudulent as those in the same bill subsequent to said item; and that if the bill containing the account from which the item in the other bill of amount brought forward, R. 367-400 "is so brought forward,"
was forthcoming, it would show this to be so. Comparing of
122 some of the prices for similar articles in the different bills
will show that they are variant from, and inconsistent with, each other, as well as unreasonable and exhorbitant, as before stated. By reason of my knowledge of the transactions at Rio respecting

the barque, and because of what I have stated, I have no confidence
whatever in the truth or correctness of any of the charges of these
two firms, though they should be found entered in their books or put
in bills. They did both furnish articles for the barque; but their books
and bills are not entitled to any credit whatever as to quantities, prices,
amounts, or dates, unless credible evidence is given to support each
charge. With respect to the other bills for supplies, chandlery, and
other articles embraced in Rostram, Dutton & Co. account, filed,
(as the same is certified,) I have before referred to each bill. But I
will further say that Hobbs's bill and the butcher's acc't (or Bap-
tist's bill) appear to me to exceed in some of the quantities
123 charged the quantities actually furnished by them, respect-
ively, for the bark and consumed on board; and I have no
doubt that many of the articles charged were supplied to the captain
on shore, and applied to his personal and private use on shore, and
the prices seem to me to be in several instances too high. I am
very certain that one-half the fresh meat and other supplies in Bap-
tist's bills was not furnished to, and used on board, the bark. All
the supplies charged in all the bills against the barque could not
have been consumed by those on board, and I think not more than
half of them were so consumed on board. Besides the fresh meat in
"Baptist's bills," there is a charge in Hobbs's bills, of which a copy
is annexed, "April 10th, butcher's account, R. 66-100," (at the end
of the bill,) for which no items are given. I know that Captain Clark
used some of the articles charged in different bills on shore. Some
of the charges, (as for example,) those for "cash," ought to
124 have been made against him and not against the barque. I
have not seen Hobbs's bill for R. 163-520, and cannot, there-
fore, state as to the items; but I have no idea that the barque could
properly be bound by the captain by a bottomry bond for them in
April, 1858. I think that bill, if true, most probably occurred
whilst the barque was at Rio in 1857, before her last voyage to the
Cape de Verds; but I may possibly err in this. I have no recollec-
tion of any articles being furnished the bark by Hobbs after the
last date of his other bill, April 10th. I cannot state as to the
items in the certified copy of Rostrom, Dutton & Co.'s account, Oct.
31, old ac't left over from this date, R. 1,808 780, as I have not
seen the particulars. I do not believe such amount could be all for
disbursements for bills of supplies for barque whilst she lay at Rio
in August, September, and October, 1857; but I think it must be
connected with other accounts and charges. I heard that firm sold
the salt brought to Rio, both voyages; but I cannot state
125 positively of this be so or not. I do not suppose that the
barque could properly be bound by the captain in April,
1858, by a bottomry bond for this "old account." The charges for
"commissions acc't" speaks for itself. I don't know if captain
charged primage on the cargo to New Orleans. Annexed hereto
are copies of bills marked "Exhibit D, No. 1 to 14, inc.," against
said barque whilst she lay at Rio in 1858, besides those embraced
in the certified copy of Rostrom, Dutton & Co. account filed, and
of one bill since date of their acc't.

All the accounts and bills and receipts, of which copies are annexed, have been exhibited to me by Mr. Law's counsel here, before and at the time of my making this deposition, and have been examined and compared by me, and the statements marked (Ex .F, Nos. 1 and 2,) compiled therefrom according to my request. The said bills, I have been informed by said counsel, were delivered by Captain
Clark to Mr. Law a short time since, in order to effect a set-
126 tlement between them; and from the contents and appearances
of the bills, I have no doubt that they were made, as they purport
to have been made, in Rio, and by the persons in whose favor they purport to be. Some of the bills included in Rostram, Dutton & Co.'s account, and particularly those of Hanah & MacLennan, Esling & Alvaranges, and Captain Close's receipt, are so manifestly injust and fraudulent as charged against the barque, and some of their charges in their own account, &c., are so obviously improper as subjects for the bottomry of the barque in 1858, on her voyage to New Orleans, and the absence of any receipts for the repairs and supplies charged against the barque for such voyage to the amount charged, was so palpable, that I cannot conceive how said firm could, as honest merchants and agents, in justice to the absent owner of said bark, have
paid said bills and charged them against said barque, and have
127 participated in said captain, (if he was constrained,) or
in colluding with him and others in making a bottomry of said
barque therefor. I am fully satisfied, however, from all that I witnessed and heard whilst at Rio, and what I have since become informed of, and which is mostly set forth in these answers, that the said bottomry was a fraudulent collussion between Rostram, Dutton & Co., Hanah & McLennam, Esling & Alvarenges, and the captain and those who took said bond, and that the purpose was to defraud Mr. Law; and I believe Captain Close was also a participant in some of said fraudulent transactions for the same object. I never heard of "Wallerstein, Marset & Co." at Rio. If such firm exists, and if they are honest men, and used any care or diligence in inquiries as to said charges, or as to the necessity for said repairs or supplies for said barque for said voyage, &c., made these investigations which
prudent and correct merchants usually make before agreeing
128 to advance so large a sum of money as $9,767 45, it seems to
me they would not have made any such advance in cash on
such bottomry; and I am therefore convinced there was some private arrangement and understanding between them and all said parties with respect thereto, not stated in the papers. I have seen and examined a bill, dated March 15th, 1858, by Edward Close, against said barque and owners for $928 60, (a copy annexed, marked Ex. D, No. 7,) and I know that in some particulars it is false and fraudulent. As to the quantities of spun yard, hemp rope, Manilla rope, and laugain, they are greatly overstated, and they are charged too high. There was but one bolt and part of another, and some pieces of cotton canvass, not 180 yards, nor anything near that quantity, and the price charged is too high by 100 per cent. at least. Captain Clark bought at aution, and not of Captain Close, some old gear, and one

topmast stay-sail, one topgallant stay-sail, and one old royal
129 stay-sail, and a cotton topsail, and some bolt-ropes, and
several pieces of plank, and some barrels of beef, and some molasses—but not much, as only one barrel full was divided between 4 or 5 captains—and some other things. These things were purchased in January or February, 1858, and chiefly belonged, as I understood, to Captain Small, of the "Augustine Heald," a vessel condemned at Rio, and after purchase at auction were brought at night on board the "Grapeshot." Several of these same articles are, I believe, included in this and in another bill as purchased from Captain Close by Captain Clark for the barque. Captains Clark and Close were trafficking and trading a good deal at Rio with persons there, in matters not relating to the barque. Captain Clark did, however, get of Captain Close for the barque two pigs, worth at most $2 each; a cotton topgallant sail, new but not finished; a new topsail; some small cans of preserved meats, and several old planks or boards, (all
second-handed and worn, not exceeding in quantity 300 feet,)
130 besides what I have before stated; but the charges in the
bill therefor are exorbitant. According to my recollection the "Grapeshot" never got any bee for any flower from Captain Close or the "Morning Star." I think we borrowed a little bread once. It was generally known at Rio that George Law was owner, or part owner, of the barque. Captain Clark sometimes claimed to be part owner, but I understood the ship's papers did not show it, but showed that Mr. Law was sole owner. Mr. Law's credit and standing as to money matters appeared to be generally known at Rio. I heard that he had other vessels there before. He was always spoken of as a wealthy man; and I have no doubt that his name, used by his authority in a fair and honest transaction for a proper object and lawful and necessary purpose, would enable any captain in his employ to raise
at Rio, and at most other ports much frequented by New
131 York vessels, if application was made to respectable mer-
chants having means and correspondence with New York, funds to a much larger amount than the aggregate of all the bills, just and unjust, against the barque at Rio, without resorting to any bottomry. My answers to the 21st interrogatory, (after the first answer thereto,) have been all given to questions propounded by Mr. Law's counsel to me under said interrogatory, and upon examination by the commission in relation thereto; and to said cross-interrogatories by said "Wallertein, Marset & Co.," libellants.

Philip Myers, to the 21st interrogatory, answers: I do not know anything else, except that I have seen and examined a certified copy of the bills and accounts filed by the libellants in this cause November the 8th, 1858. I look upon them as having been
trumped up to cheat Mr. Law. No man who was at Rio and
132 had general knowledge of transactions of that , could have
been ignorant of Captains Clark's goings on at Rio in 1857 and 1858, and I am forced to believe that Rostrom, Dutton & Co., Hanah & McLennan, Esling & Alvaranges, and Captain Close and the libellants in the suit, if there is such a firm at Rio, and Captain Clark, all colleagues.

together to carry out a fraudulent plot. This opinion is found upon all I saw and heard at Rio, a great deal of which I could not fully detail, as there were many suspicious incidents, and also upon inspection of the copies of the bills and accounts filed. The conduct of all the parties I had any knowledge of, (I did not know or hear of Wallerstein, Marset & Co.,) was such that it created suspicion in my mind as to the honesty of what was going on; and I am now, since I have the bills and accounts, fully satisfied that there was a great deal of fraud. I think several of the bills and accounts false on their face.

I have been shown by Mr. Law an original account, made out
133 in favor of Esling & Alvaranges, from February 8th, 1858,
down to and including April 16th, 1858, for Rs. 1,121 890, and receipted April 17, 1858, at Rio de Janeiro, foi Esling & Alvaranges, by R. Potsaly. It is annexed, marked Exhibit R R. I think it shows that Esling & Alvaranges' account, filed in this case, for rs. 2,175 940, is false and fraudulent. Mr. Law stated that he found this paper among several papers and accounts left with him by Captain Clark in August or September last. I do not know "Patchy" handwriting; but the account looks to me like the other accounts I have seen of the firm, and in the same or very similar handwriting, as near as I can judge, and is made out on one of their bills that have an engraved heading. I have no doubt of its genuineness. I am satisfied that the charges not in this bill, but which are in the bill filed by libellants, have been fabricated and trumped
up, not only from my comparison of the two bills, but because
134 I was on board of the barque all the time, and have no knowl-
edge that the articles so charged in the bill filed ever came on board. There are many articles in both bills that I do not believe were ever supplied to the barque by this firm. The prices are exorbitant in many instances. From my knowledge of what the barque did receive on board, in 1858, from this firm, I am satisfied that she did not in all have sent on board one half the amount charged in the bill for Rs. 1,121 850, annexed; I mean as to different articles and quantities of each, as well as amounts charged for the same. What Captain Clark received on those for his own use and had charged to the barque, I cannot say. As to the sugar and molasses charged, I know both accounts are false. We never got one-tenth of the quantity charged in either bill from Esling & Alvaranges, either while at Rio, in January, February, or March, or in April. just before
we left. I don't recollect of any got from this store, except
135 in one instance, a small quantity. We had but little on board
while at Rio, in 1857 or 1858; stinted on short allowance as to both, on our voyage to New Orleans. We got some molasses at Grand Caymen. So likewise as to the ship chandlery, and many other articles charged against the barque, I consider them false, because I am sure we did not receive them on board the barque. We had no use for many of them; some articles were used on board on the different voyages that were bought by Capt. Clark, but I don't think that altogether they cost, except the hausser and boat purchased at Malta, more than $150 00, or at the outside $200, on all the voyages.

I think the bills for wood, fresh provisons of different kinds, eggs,
and stores generally, are at least two-thirds incorrect. Captain
Clark may have had these things ashore for his own use, and had
them charged to the barque, but I know we did not have one-third
of them on board the barque. I am astonished at these
136 charges from the time the barque arrived at Rio, in January,
1858, till she sailed to New Orleans. If the statement as to
the men on board in Jan'y., February, March, and April, is examined,
it will be seen that most of the crew were ashore part of that
time in the hospital at Rio, or had left, and there were not enough on
board to consume the things charged. If the bark had her full crew
on board all the time, and if she had no provisions or stores on hand,
$100 per month would have been more than enough to buy at Rio, or
at any place where said bark was, (except Ivica and the Isle de Sal,)
full supplies and provisions for the barque. That sum should have
sailed her all the time. I think $200 ought to have paid for all the
provisions, stores, and supplies necessary for her after she was repaired,
and was about to sail for New Orleans, and enable her to make
such voyage in safety or to come to this port, even if she
137 had not any supply on board; but the barque was well supplied
when she left New York for Constantinople as to everything,
and she needed no additional supplies at any place, except a
few fresh provisions, fuel, water, small stores, and the like, until she
was about to leave Rio for New Orleans. She had, however, considerable
old stores on hand then. The bills for supplies filed in this cause,
I consider as mostly got up and in many respects false. I consider
Esling and Alvarenges' bill as really scandalous. This bill is charged
to the barque, when, if the articles were furnished at all, and many
of them I am satisfied were not furnished at all, and many of them,
I am satisfied, were not to the barque, they must have been furnished
to the captain ashore. I have my suspicions, this is
the fact as to some, but other articles I believe were never furnished
even to him. I examined several of the bills for ship chandlery
charged in the account filed by libellants, and also, for provi-
138 sions and stores, medicines, and the like. I have looked at
Freiter's bill, r's 86,820, annexed to Eiler's deposition as Exhibit
C, Nos. 4 and 5, and one of Hobb's bills for r's 186,760, same
exhibit, No. 7, and Esling & Alvarange's bill for r's 2,175 940, Exhibit
E, annexed to Eiler's deposition, and Baptist's bill for r's 2,12,3 80,
annexed to Eiler's deposition as Exhibit C, No. 11, and Baldwin's beef
account of $88 00, same exhibit No. 12, and Island Queen's for bread,
r's 89,820, in same exhibet No. 14, and Captain Close's receipt for r's
193 140. same exhibit, No. 13, Sunto's medicine bill for r's 28,200.
same exhibit, No 9, and other bills mentioned in Rostrom, Dutton &
Co's account annexed to Eiler's deposition as Exhibit "B." I have
also looked at Captain Close's bill, $928 60, annexed to John C.
Eiler's deposition as Exhibit "C," No. 7, and also the bills of
Wm. P. Overmans, Isaac de Stillmaker, C. G. Harvey, Samuel
Southern, and the two permits accompanying it, and Es-
139 ling and Alvarange's for r's 231 000, not included in
Rostrom, Dutton & Co's account, and which are annexed

feet below her light-water line. She was tight, and sound, and strong; was well fitted in every respect and needed no repairs. Her copper was not injured as far as we saw. We had not met with any accident to her since she left New York, except what I have stated. She was as good and safe a sea-boat, I think, as ever floated; she did not leak at sea or in port. We were not obliged to pump on account of any leaking during the whole time. The captain stayed ashore a good deal, and was very thick with Captain Close, of the barque "Morning Star," of New Orleans, which vessel lay there several months. The captain and the American consul appeared to be
146 good friends. There was a good deal of talk about the "Grapeshot" in Rio; she was looked at as the crack Yankee ship in port. The crew wandered that Captain Clark did not get a freight home, as there was plenty of good freight for the Atlantic ports of the United States all that fall, which he might have got. Other American vessels were loading and sailing every week to the United States. There was was a good deal of talk ashore about his conduct. He said constantly a good deal about his going to Buenos Ayres, to Calcutta, to the Cape of Good Hope, and around the Horn to the west coast of South America, and other places further off from home than Rio; but he said he was not ready to go to the United States yet. I heard him say a good deal, and heard others repeat what they had heard him say like what I had heard him say. He said he would go a black-bird catching, by which he meant going slaving to the coast of Africa, if he could get a good offer; and he said he was not afraid, for the barque, with a good breeze, could outsail any
147 British or American man-of-war. He said he and his crew could make a good speculation by going into the business for a few months; all he wanted was a good offer. He talked also about going after coolies. His laying there, and idle so long, with such a fine vessel, while other vessels not so good as the "Grapeshot" were getting good freights to the United States, and his talking about what he wanted to do was the subject of conversation abroad, and every time I went ashore I heard remarks made about it; nearly every one ashore, that I talked to, would refer to it, and asked me if I was going to Africa after niggers, and so did also the crews of the other American vessels in port. While the "Grapeshot" was at Rio along in the fall, I believe, in consequence of the general talk about the captain's behaviour, and the barque staying there so long idle unnecessarily, and the suspicions as to his not intending to return home, and of his arranging plans to go a slaving with the vessel, some of his crew left her. Mr. Sharpe, 1st mate, Herman
148 Fisher, Jack Moore, and Little Jim all quit her. I heard no fault found with any of them on board. The mate did not tell me, but all the others said they quit in consequence of rumors afloat, and of the captain's strange and suspicious conduct. I had a good deal of conversation with Herman Fisher, as he was from New York, and I from Brooklyn, and we were very friendly; he had shipped as a seaman at Constantinople to come home. The captain refused to give him his discharge at Rio after the barque was painted, or to pay

him his wages, or his advance to get home. I heard no fault found with Fisher; he was a good seaman, and done his duty faithfully, but he said the captain had deceived him, and that he had no doubt intended to do something wrong with the barque in some way, and swindle her owners, or get into the slave trade, or cast away the barque purposely, and that he would not run any risk of getting into
trouble by staying in her any longer, and he advised me
149 to quit also, and he said that as soon as he got home he in-
tended to inform Mr. Law all he knew. He called at the
consul's to try to get his wages and home advance, but could not get any help, and he then went to the American minister, and was told that it was not in the line of the minister's business, but the consul ought to see to it. This was what he heard from him; and the captain said afterwards, that he knew Fisher had been to the consul's. I would have left the barque then at Rio, but Captain Clark told me that he would come home soon, and besides he would not pay me my wages, or give my discharge, and I was without money or friends to get me righted, and if I left, he said, I forfeited my wages. I was without winter clothes to come on this coast with.

He said my shipping articles were for the whole cruise, wheresoever he went, till the barque got back to New York. While we lay at Rio, we made some sails for the consul's yacht, and scraped her
bottom, and fixed her up by the captain's order, and our crew
150 rowed a boat-race in the harbor for the captain, and for none
of this work did he pay us a cent. I expected the consul paid
him; for I do not suppose that he expected the work done by us poor men for nothing. He was the common and public talk of the place, and it was said several of the set he went with a good deal were of a very suspicious kind. Most of the Americans on board the vessels in the harbour spoke of Captain Clark's actions as curious. I do not think, and did not then think, there was any necessity for staying at Rio more than three weeks from the time we got there; and I am certain that if the captain wanted to get away with a good freight to New York, he could have done so at any time from August to November, but he refused all offers of freight to the United States, and tried to get freights to the other places away from the United States that I have mentioned. If he had come home in ballast after
staying there a month, it would have been cheaper than to
151 have laid there idle on expense to November, for he would
have reached New York in that time. As the crew of the
barque did all the work on her, except what the carpenter of the American schooner, as I have stated, did, the expenses on her were not much at Rio, besides the port charges. I don't know what they were. I sailed in the barque from Rio to Isle de Sal, because I could not better myself, and therefore made up my mind to stick to her until spring, unless she went a slaving, and I saw no signs on board of her going in that business that voyage. We had no bad leak on the voyage out or back. I have heard that the captain wrote to Mr. Law, which letter, dated June 6th, 1858, Exhibit X, at New Orleans, I have seen. All that isstated inthat letter as to leaking and

about pumping to keep her afloat is entirely false. There was nothing of the kind. She did not strain. She was not weak, and we had no severe gale out or in, and that letter is the first I ever
152 heard of the salt falling short or melting or dissolving. All that is a made up story invented since, and there is not a word of truth in it. The crew of the Grapeshot smuggled off in boats secretly at night by the order of the captain Clark, four or five boat-loads of old copper or metal and nails to the barque "Morning Star," to New Orleans, Captain Close, which barque had been laying in port several months; Captain Close and Captain Clark were very intimate, and there appeared to be some mistery between them about this old metal. The "Grapeshot's" old metal was all thus put on board the "Morning Star." The Morning Star sailed from Rio several mornings before we did, and, I heard, was destroyed by fire at sea some days out of port. The captain came back to Rio with his crew the day before we sailed. He had his wife and two children with him. He came back in a boat Captain Clark let him have. We heard, at New Orleans, that the old metal on board of her was insured there. I do not know anything about Wall-
153 erstein, Massett & Co., the libellants. I never heard of them before. I saw a certified copy of the libel and of the bottomry bond sent from New Orleans to Mr. Law, and shown to me. I did not hear of any Bottomry at Rio. I heard some rumors about it. I do not know what funds or credit the captain had at Rio, but he loomed pretty large there. He had, I suppose, the freights received at Constantinople. As he had no freight to pay on the cargo from the Isle de Sal to Rio, and his port expenses away from Rio were not much, according to his statement of the profits, he ought to have had several thousand dollars on hand, (I should say that he ought to have had six or seven thousand dollars, at least.) He paid his crew very little, and some of them died, and some went away without being discharged, and some of these he owed them, when they left. As he did not pay for part of the salt bought the first voyage at Isle de Sal, I think he must have had at least the amount I have stated. He was speculating, I heard, in Rio a good deal, besides his two salt cargoes, and his old metal speculation, and I have under-
154 stood that he intended, if he quit the barque, to go into business in Rio in the ship chandlery business. I never heard of any advertisment for money to pay for the work done on the bark in Rio. I did not know anything in Rio, of any of the bills being unpaid. The bottomry, I think, was kept pretty much a secret at Rio. I have known George Law by public report a good while. I never saw him or spoke to him till August, 1858. I have always heard him spoken of as a rich man. I heard him rated so at Rio where he was talked of as owning the "Grapeshot." I should suppose from what I heard that he was well known by character at Rio. I heard that the "Grapeshot" had been there before in 1856, and that before that time and some time ago several steamers and other vessels, in which he was concerned, going out to California from the United States had been in the port. From the talk I heard of Mr. Law, I have

no doubt that any respectable American house in Rio would
155 have advanced on his credit, on any fair transaction, any sum
the barque needed if the captain had applied to such and
shown that the money was honestly and fairly needed. The work
was all done some days before the 13th of April, 1858, and we loaded
afterwards. The house of I. O. Woodruff & Co. paid off the crew
for Mr. Law at New Orleans. As soon as I could get away, I went
up the river on the steamer "Nick Thomas," and went to Cleaveland,
Ohio, and from thence to New York. My brother and sister live in
Cleaveland. I left in ten days. After I came here, Herman Fisher
called to see me, and asked me about the transactions at Rio respecting
the barque after he left, and the next day came to see me again, and
told me that he had informed Mr. Law's counsel what I would testify
to, and that it was wished that my oath should be taken in the suit
against the barque in New Orleans. There was no necessity for
Captain Clark laying at Rio from 2nd January till 17th April,
156 1858, for he could have got a good freight in January to the
United States, and got away easily by the end of the month
if he had wished to, and it was the same in February and March.
During these months the freights were brisk and good from Rio to
New York, and vessels were constantly loading and sailing for
the United States with full cargoes. Why he staid three months in
the previous summer and fall, and three months and a half the last time,
those of us on board could not imagine any good reason for. There
are a good many incidents that it would take a good deal of time to
relate and difficult to set down in this properly as they
occured, if I could at once remember them all, and which took place
after we left Constantinople, and which convinced me that Captain
Clark did not mean to do right by Mr. Law. Some of them I have
mentioned, and besides, after his first arrival at Rio, he talked a
great deal about his object being to stay away till he made all
157 the money that could be made out of the ship before she came
home and he gave her up, and said Mr. Law was rich and could
afford to be bled of some of his loose cash. He abused him at Rio
several times, because he could not hear from him whether he had
insured the barque or not, and I heard him swear several times that
he had a great mind to run the barque on shore, and he said that he
would sell her if he could, and get a good price for her in cash. He
said he owned half of her himself, and had a right to do as he pleased
with her. I became satisfied, when we were last in Rio, that he was
concerned with others in catching and contriving ways to cheat Mr.
Law, or somebody else, respecting the barque, but I did not know
how their plans were to be carried out. I had a strong suspicion
that it was intended to cast her away. Herman Fisher and myself
agreed with each other at Rio, in January, that some knavery would
turn up. The day before Captain Close sailed in the barque
158 "Morning Star," Captain Clark sent him our pinnacle,
which was a large and first-rate boat, that could hold ten or
twelve persons safely, and we got in exchange an old broken boat of
iltle value. When Captain Close came back to Rio with his wife

and children and crew in this pinnacle, and reported the "Morning Star" as having been burned, this circumstance was brought to my mind as suspicious. We got a new top-sail and top-gallant sail from Captain Close the day before he sailed. The sails were not finished. We finished and put the top-gallant sail in the "Grapeshot." We brought both home in the Grapeshot to New Orleans. The conduct of Captain Clark in laying so long at Rio both times was notorious, and so also was his refusing freights to the United States, and his wanting to go to other places. I have mentioned, and I think it was generally believed, he was going into the slave trade.

I don't know why he came to New Orleans instead of coming
159 to New York, but he said, on his way home that if old Law
expected to get the barque, or wanted the barque, he should come after her to New Orleans, for he would be damned if he would take her to him to New York till he got ready.

Herman Fisher, to the 21st interrogatory, answers: I do not recollect anything at present, except what I have stated, that I can now call to mind. If specially asked on any point I might, perhaps, answer more particularly than I have, but not differently from what I have said. I do not know Wallerstein, Marset & Co., and never heard of them before. I never saw George Law till I called to see him after my return from England to enquire about my wages, and tell him
what I knew. I have known him by reputation. He is con-
160 sidered as one of the richest men in New York, and I have
heard him spoken of as such in Europe, in Constantinople. All Americans everywhere that I have talked with appears to consider him so. He is well known in Rio Janeiro as such. I heard him talked of there as the owner of the "Grapeshot" a good deal; and from all that I heard, I believe his credit there would command as much money as that of any man in New York, and though I knew nothing about the bottomry bond, yet I believe cash to five times its amount could have been got there on his credit by applying to any respectable American house there that had means. There were no provisions or stores for the voyage that I know of brought on board at Constantinople, except some marketting and cabin stores. The provisions dealt out to the crew were, I learned, the stores on board when the barque left New York, and of which she had an abundant
supply. The expenses at Constantinople must have been very
161 small. The ballest may have cost $60 or $70. We had steam
towage less than two miles from theBosphorous around Seraglio Point into the Sea of Marmora, which could not have cost much. The barque was in first-rate order and condition at Constantinople, and had not met with any accident that I heard of, except losing one man overboard in the passage out from the United States. We had no pilot from Constantinople, nor till we got off Valette, in Malta. The crew painted the barque while she lay there, inside and outside, under the superintendance of the mate. The captain staid on the shore most of the time, except two or three nights. He came on board once every day. A barrel of salt beef was brought off to the barque, but the captain was cheated in it, as it was spoiled and not

fit to be eaten. A little fresh meat was brought there, but the ex-
penses of the vessel for stores could have amounted to but little at
Valetta. We took in water there, and a new hawser was
162 purchased by the captain; but I do not know the cost of it.
I suppose it may have cost $80 or $90. The captain also
bought a gig-boat at Malta, which, I understood, he gave above $70
for. We had a pilot coming out as well as going in. We had no
cargo on board. Here Mr. Beers, the passanger, left us, and went on
board the barque "Cadet," for New York. After we left Malta the
captain let drop that he did not intend to return to the United States
for several months, but intended to get a freight, if possible, of salt,
and go to Buenos Ayres. This made some of the crew uneasy and
dissatisfied, and amongst them myself, and at Ivica several wanted to
leave the barque on that account, but the captain refused to let us
go. He had a jaw with first mate respecting the matter, as the first
mate did not wish to go to Buenos Ayres, but to the United States
and New York, where he had shipped for. I was anxious to
163 leave and come home in the "Cadet," but the captain finally
declared, if he could get a cargo of salt at Ivica, he would go
straight to New Orleans. All hands went on shore at Ivica.

Just before we left 8 or 9 bags of potatoes were purchased, and
some bags of Spanish bread—I believe 5 or 6 bags—and we got some
water, aud we had a pilot going in and coming out of Ivica, but I do
not believe there were other expenses. I learned there that there
was no port charges, as we took salt, which I understood was the
regulation. On the voyage from Ivica to Malaga no accident what-
ever occurred to the barque. We heard at Malaga that, notwithstand-
ing his assurances, the captain had took his clearance at Ivica for
Buenos Ayres. We heard this from the captain when he told the
consul at Malaga of it, as a reason why he did not wish to go to New
York. The crew were very much dissatisfied at this, and if he had
gone into Malaga several would have left him. At the Isle de
164 Sal there were no port charges, no pilotage, no provisions, or
stores purchased. At Rio the crew painted the vessel again, and
scrubbed her copper, and greased it as far as we could get at it with-
out heaving the barque down, but she was careened afloat as much
as we could. The copper was in a good condition and but little
worn; were any nails were out, where it was in any decree damaged,
which was scarcely nothing, we repaired it. No carpenter work
was done except by the carpenter of the "Young America," which
I have, I think, mentioned before, and there was nothing else needed.
The vessel empty and light, having no ballast in her, we scrubbed
the copper several feet below the light-water-line of the barque. We
painted her also on the inside, and varnished her inside, to down
within a few feet of the kelson. While in Rio Janeiro, in September
or October, the captain set myself and others at scraping
165 the consul's yacht sloop, and in making sail for her and put-
ting her in order and trim; and there were several boat races
in the harbor in which the captain was concerned, and in which part
of his crew, and amongst them myself, were employed; but we acted

under his order, and got no compensation for this service and labor. The captain stayed ashore nearly all the time at Rio Janeiro. He was very intimate with the captain of the barque "Morning Star," of New Orleans. The captain talked to me a great deal on the subject of not going to the United States, and tried to persuade me to stay by the barque and not to go home. He said he would make it to my advantage if I would do so, but I wanted to come home and refused; and he then refused to give me my discharge, or to pay me, and I went to the American consul, but he said he could not help me, and advised me to go back to the barque; and the reports about the town and in public places also gave me disgust. The captain talked about sailing with different cargoes for Calcutta and the Cape of
166 Good Hope, and round the Horn to the west coast of South
America, and other places. He spoke of good speculations he would make, and tried to get me to stay with him. He said the barque "Morning Star" was going to Calcutta if he went; but what most dissatisfied me was the public report that the barque was going on a slaving cruise, which I often heard the captain say was the best vessel for he had ever seen; that he would go if he could get a good and safe cargo. I was satisfied that he had a notion of it. He told me more than once at Rio Janeiro that he did not intend to return to the United States for several months, and that he intended to knock about in the barque a year or two, and make the most out of her that he could, and when he could make no more in her give her up to Mr. Law. The owner might take her and do what he liked with her, though he used indecent language at the time. He told me this in substance several times and on different occasions,
167 when coaxing me to stay in the barque, and the advantages I
should receive if I would do so. From what he said I believe he intended to go into the slave trade if a good chance offered, and at any rate he wanted to defraud the owner, Mr. Law, who he abused to me. My belief was founded on what he said, and on the fact that he could have got a good freight at Malta for New York, and plenty of good freight at Rio whilst there for New York, also, if he had wished it; and he said his owner expected him to return to New York immediately, but he did not intend to give up the barque untill he had made something out of her himself. This belief was also founded on the fact that he said at the Isle de Sal that he was out of money, and as I knew he had spent but a few hundred dollars at most for the use of the vessel after leaving Constantinople, and received a large amount of freight there, I concluded there was some-
168 thing wrong in the disposition of the money, or that he in-
tended to keep it. I heard that he drew on Mr. Law at Isle de Sal for some of the salt purchased. Before the barque sailed from Rio, a few days after I left her until she returned, I could not ascertain where she had sailed for. There were reports that she had gone on a slave voyage. From all I saw and knew as to the way things were managed at Rio, I have no doubt that the repairs and bills against the barque, and the bottomry of her, was as shameful a fraud as ever was perpetrated. I am fully satisfied that all the parties

concerned knew of Clark's doings at Rio and his designs, and were combined with him. I have looked over the accounts filed, and to my mind they show they are in many respects dishonest. I am going to sea very soon and shall not return for some months to the United States.

169 Charles Hillman, to the 21st interrogatory, answers : I have
examined Esling and Alvaranges' two bills, one for R's 2,175-940,
annexed to John C. Eiler's deposition, Ex. E.; and the other part
of a bill for R's. 1,121-850, annexed to Philip Myers' deposition as Ex.
R. R., and the statement of them and their differences marked Exhibit
E in John C. Eiler's deposition, and I have no doubt the largest
bill is a downright fraud, manufactured to cheat Mr. Law, and that
the interpolations and alterations noted in said statement were falsely
charged. I know that the articles so marked were not received on
board the barque; that is, I am satisfied of it. There were no persons
on board in January, February, and March, who could have consumed
the different articles charged against the barque. As to the
sugar and molasses charged, it is scandalous that such charges have
been made. When we left Rio, we had not a good supply of provisions
and stores for the voyage, and we were out of sugar
170 and molasses before we got into the Caribbean Sea. We got
some molasses at a key in the Caribbean Sea, and some firewood.
All the provisions and stores we had on board when we left
Rio did not exceed in cost $150. I heard at Rio, from the captain
and others, that he was coming back to Rio and going into partnership
with Close & Esling in the chandlery business. I have looked
at Captain Close bills, No. XI, Exhibit G. G., No. 7, and other bills
against the barque in his name, (some few of the things were had but
of little value,) and I consider these bills as trumped up. I have
looked at No. XI., Exhibit P. P., No. 1, and also No. 2; they are
false, and I believe forgeries. We were not at Isle de Sal in December,
1857, but at Isle de Mayo. We had no such men on board—at
work on board—nor any Smith. I do not believe there is a Smith on
the Isle de Mayo. I believe these two bills were made up at Rio
from the handwriting, and because they are both false. I do not believe
there are any such persons as "Brown & Moore" and
171 "John Eugre" at Isle de Sal or Isle de May. I often heard
the captain talking about Mr. Law, and he abused him very
much. He said he would take the barque to China, to the East Indies,
to Calcutta, and around the Horn, and to the coast of Africa,
if he pleased. Said he would go after coolies. Fisher left us in October
at Rio, and two others. Fisher was a good man and did his
duty, but the captain would not pay him, and Fisher wanted to come
back to New York, which he had shipped for, and he said the captain
was going into the slave trade, and so he left. We were
chased off Rio in November by two men-of-war, who suspected us.

The conduct of Captain Clark and all his doings were notorious in Rio, and his staying there so long, both times, idle and speculating ashore It was a good deal talked about. All the American captains and crews talked more or less about it, and so did the people

ashore. I could relate a good many things that occurred to
172 show my opinion of matters and things were correct, and that
what I have stated is right, if I was asked particularly as to
them, but I cannot recollect all of them all at once, unless asked about them. Never heard the vessel was bottomried till I got to New Orleans.

Cross-interrogatories on behalf of the libellants, Wallerstein, Masset & Co.

I x°. What is your age? Are you a white man, or a man of color? If you say you are a citizen of the United States, then state whether you are native or naturalized; if the latter, in what court were you naturalized?

John C. Eilers, to the 1st x-interrogatory, answers: I have stated my age in my answer to the 1st x-interrogatory. I am white, and I do
not know of any relative of mine who is tainted with African
173 blood. I have before answered the residue of this cross-
interrogatory in my answer to interrogatory 1st.

Philip Myers, to the first cross-interrogatory, answers: I have answered this fully in this. I am neither a nigger, nor a mulatto, nor an Englishman, nor a Frenchman, but a native-born Ohio man.

Herman Fisher, to the 1st x-interrogatory, answers: I am, as before stated, about 26 years old. I am a Saxon white man, and became naturalized as a citizen of the United States in 1854, as I have stated, in the Court of Common Peas, in the city of New York.

Charles Hillman, to the 1st cross-interrogatory, answers: I am white; the rest of this I have answered before.

174 II x°. By what name did you ship on the "Grapeshot?" Did you sign shipping articles? If you say you shipped in New York, state from what shipping office or by what shipping master you were shipped.

John C. Eilers, to the second cross-interrogatory, answers: I did sign articles. I shipped in New York. I have before answered the rest of the cross-interrogatory in my answer to interrogatory second. I shipped by my own name.

Philip Myers, to the second cross-interrogatory, answers: I signed articles. I don't recollect how they wrote my name. I expect I made my mark, because it was less trouble than to write my name. I did not care what name they called me by, so they used me well, and paid me my wages. My name is Philip Myers; I can read and
write. The Portuguese at Rio, called me Pillmyer, and it
175 answered just as well as my own name. Some of the things I
got are so set down in the acccount. I shipped, I think, at the office of shippers, recollect at Peck slip, in New York. I am not positive that I shipped at that office. I saw the captain before I shipped.

Herman Fisher, to the second cross-interrogatory, answers: By my name, as now given. I never take a false name. I did sign shipping articles. I did not ship in New York, but in Constantinople, as I hereto stated in my deposition.

Charles Hillman, to the second cross-interrogatory, answers: By my own name. I do not know they wrote it. I have before answered all I can as to the rest of this.

176 III x°. If in answer to the 5th and 6th chief-interrogatories, you state that Joseph S. Clark, or any other person, was owner of any cargo on the "Grapeshot," then state precisely the facts by which you know the ownership.

John C. Eilers, to the third cross-interrogatory, answers: I have before stated all that I can in answer to this interrogatory, in respect to the cargoes of salt in my answers to interrogatories 5th and 6th. I have suspected that Captain Clark was in some way interested in the cargo of coffee to New Orleans, but it was mere supposition, and I cannot specify any particular reason for it.

Philip Myers, to the 3rd cross-interrogatory, answers: I have stated all I know on the subject enquired of, and I refer to my answers in this, and contained above, and I cannot state any other fact.

177 Herman Fisher, to the 3rd cross-interrogatory, answers: I cannot give any further or additional answer touching this interrogatory than I have already given.

Charles Hillman, to the 3rd cross-interrogatory, answers: I have stated that I do not know respecting the cargoes.

IV x°. State your means of knowledge of the freight, if you speak of it.

John C. Eilers, to the 4th x-interrogatory, answers: I helped load the vessel. I know the barque had 3,800 bags on board. I believe the captain took at Grand Cayman, a bag to pay for fire-wood and molasses obtained there.

Philip Myers, to the 4th cross-interrogatory, answers: My answer heretofore given states all I know on this point. All my knowledge was gathered on board. I never saw any of the freight payers. I heard Captain Clark say what I have stated before, and I know pretty nearly about the amount of the cargo on board the different voyages, as I have before said, just as sailors generally know about such things. 178

Herman Fisher, to the 4th cross-interrogatory, answers: My answer to this is precisely the same as my answer to the last.

Char's Hillman, to the 4th x-interrogatory, answers: I do not know as to the freight.

V x°. On what terms of intimacy did you stand with Captain Clark? Were you on good terms with him, or on the contrary? Did you ever have any quarrel or misunderstanding with him? When did you see him last?

John C. Eilers, to the 5th x-interrogatory, answers: Captain Clark was variable. He was often sociable and talkative, and sometimes close-mouthed and mysterious for a while. At Rio, he and Captain Close were very mysterious, as if they had very important projects on hand. But Captain Clark, when he came on board, would now and then run on a good deal about his affairs. Considering our different positions, we were pretty intimate. I never had any quarrel with him, or misunderstanding of any account. 179

I don't think he acted right about my wages, but I don't harbor any spite for that.

Philip Myers, to the 5th x-interrogatory, answers: Captain Clark was very often disposed to talk to different ones of the crew. He was sometimes very kind to me, but his disposition was a good deal flawy. We were on good terms generally. Sometimes he got cross and snappish to me and to all hands; but that is not strange for a captain. I don't think he settled my account fairly; but I harbor no ill-will. I saw him in New Orleans in June, and I saw him in New York this summer, but did not speak to him.

180 Herman Fisher, to the 5th x-interrogatory, answers: The captain was more sociable with his crew than is common, though he was sometimes very changeable in his behavior. He talked to me a good deal at different times, as I have stated in my deposition. Of course, when he refused to pay me, and when I quit the barque, I had a misunderstanding with him. I told him my mind. He deceived and wronged me. I thought him, and still think he is, the worst and most unprincipled man I ever knew, and I never came across another man who had so little shame about his conduct. I have not seen him since I left Rio in January, 1858. He was in New York last summer, but kept clear of me, and I could not find him to sue him.

Charles Hillman, to the 5th cross-interrogatory, answers: The
captain and myself were intimate part of the time while I was
181 second mate, and before. We had misunderstandings; and I
regard him as a very great rogue, and I have no doubt he is
striving to defraud in this case.

VI. x°. Did Captain Clark ever consult you about his purchase of, or speculations in, salt or other merchandise? If yea, state the reasons which induced him to consult you. Or did he ever make any statements to you on these subjects on his pecuniary affairs, and why did he make such declarations to you?

John C. Eilers, to the 6th x-interrogatory, answers: He never did consult me particularly. He often talked to me and others on board about what he intended to do. and respecting himself and his affairs and business, and the like. He bragged a good deal about the barque. I supposed he talked to us at such times because he had nobody else to talk to.

182 Philip Myers, to the 6th x-interrogatory, answers: He never did. I heard him talk a good deal about his affairs. I don't know why he did so, particularly. He did not talk to me specially. He talked pretty much as if he did not care who heard him. and I considered a good deal of it as what is called "blowing or gassing."

Herman Fisher, to the 6th cross-interrogatory, answers: We talked a good deal about his affairs. Some of his talk I believed, and some I did not. I have before stated a great deal of what he told me at different times. I did not, at first, fully believe what he said about his designs respecting the barque, and as to cheating Mr. Law. but I did after a while; and the end, according to my opinion, shows that I did not misjudge him. What his particular reasons were for talking to me as he did, I cannot say. I suppose he wanted to show me how smart and sharp he was.

183 Charles Hillman, to the 6th x-interrogatory, answers· He
talked and bragged and boasted and vapoured a good deal, and swore about Mr. Law, and said he did not care a fig for him, and would do as he pleased with the barque. He talked at different times about going into the slave trade, and a great many other things. He always praised the barque and her sailing. All hands agreed she was a first-rate vessel, and a very fast sailor, and a good sea-boat.

VII. x°. Are you now in the employment of George Law? Or are you employed on any of the ships which he owns, or in any in which he is interested?

John C. Eilers, to the 7th cross-interrogatory, answers: I am not now, nor ever have been, in the employment of George Law. I do not know that he is owner of, or interested in, any ship or vessel at
this time, except some steam tug-boats in New York. I am
184 not employed in anywise by him, and neither he nor any body
for him have procured me employment. I am second mate of a 1,000-ton ship. I never saw George Law till about ten days ago, when he sent for me to ascertain if my testimony would be of any service to him, and to get me to overhaul the bills.

Philip Myers, to the 7th x-interrogatory, answers: I am not, and never have been, in his employ, nor employed on any ships he owns, or has any interest in, I know of, except while I was on board of the "Grapeshot." I never got any favors from him. He never helped me in any way that I know of.

Herman Fisher, to the 7th x-interrogatory, answers: I am not, and never have been, in his employment in anywise, nor have I been employed on board of any vessel in which he had any interest, ex-
cept the "Grapeshot," nor in any other way, nor do I expect
185 to be employed by him. His counsel requested me to look out
for any of the crew of the "Grapeshot" that might come to New York, and I did so; and he paid the omnibus hire, ferriage, and expenses of getting them, when I found them, to go to Mr. Law's office, and to attend at the commissioner's office, which, amounting to trifling sums, of which I kept no account. I suppose all the expenses did not exceed ten dollars. His counsel requested me to keep watch for the men, because I knew many of them, and because I knew how to get track of them if they arrived here. I got no wages whatsoever for doing this, but only the actual expenses, as I have stated.

Charles Hillman, to the 7th x-interrogatory, answers: I am not, and never was, in his employ in any way.

VIII. x°. Have you lately received any present or reward from
George Law, or from anybody else? Or have you been promised
186 any by him or anybody else? And in either case, what was it
for?

John C. Eilers, to the 8th x-interrogatory, answers: I have not ever received any present from George Law, nor lately from anybody. Mr. Law's counsel has paid me my legal fees for attendance as a witness for several days before the commissioner in giving in my testimony, and in examining the papers and accounts, in order to ascertain respecting them, and in reading the deposition afterwards. These fees are certified by the commissioner. I have not been promised anything. I presume this cross-interrogatory is to get me to answer whether or not I had been bribed to give false testimony. I consider such question, and also that about my color, as insulting, and that the court should censure those who propounded them to a witness. In further reply to this disreputable cross-interrogatory, unworthy a respectable lawyer, I can refer for my character to Frederick Tannekohe, Brooklyn, N. Y., Mr. and Mrs. John Mullen, 187 John Brumnieshope, John A. Robinson, N. Y. city, John Gilyrichs, Baltimore, and many others in New York and Baltimore, and to every captain I have sailed with. I think it due to myself to say further, in answer to this coss-interrogatory, that I have been brought up and educated in a way that has taught me to be honest, and just, and repectfull to all men; and I think I am so, although I am poor, and my occupation is an humble one. I have been second mate of different vessels, though I am but little more than two years over my minority; but rather than be idle, I have since shipped as a seaman, as I did in the "Grapeshot." I can read and write German, English, French, Spanish, and Portuguese; and I understand arithmetic, and the business of my profession, and accounts passably well, and which has enabled me to investigate the bills and accounts against the barque, as I have done.

(Signed,) JOHANN C. EILERS.

188 Subscribed and sworn to before me, this 26th day of November, 1858-

(Signed) R. STILLWELL,
U. S. Commissioner.

Philip Myers, to the 8th x-interrogatory, answers: I have not, unless little things from my own relations or from my ship-mates last voyage; that had nothing to do with the matter; I don't suppose that they knew of this dispute, or of my being a witness, and gave me the things from friendship only. I have never been promised any present on account of my evidence in this case nor by anybody connected with it. Mr. Law's counsel, through Herman Fisher, paid my ferriage and omnibus hire for attending to give in my evidence, and my fees fixed by Mr. Stillwell, has been paid me. I have told the truth in my evidence, without veering from it. I have no interest not to tell the truth as to all sides. I admit that I am convinced there 189 is a base scheme to cheat Mr. Law, and as an honest man I want justice done.

(Signed) PHILIP MYERS.

Sworn to and subscribed before me, this 24th January, 1859.

(Signed) R'D STILWELL,
U. S. Commissioner.

Herman Fisher, to the 8th x-interrogatory, answers: I have not received any present from George Law, or anybody else; nor has any present, or other things been promised me by him, or anybody else, either in relation to this suit, or anything concerning it, in anywise. I do not expect anything from Mr. Law, in any way, or any other person for him. Mr. Law's counsel has paid me my certified fees as a witness for attending before the commissioner to give my evidence, and he has paid me the small amounts I have mentioned in reimbursement of actual expenses in getting Myers and Eilers or Ilers, and Linn to attend and give their evidence; and this is all that I
190 have received or expect to receive. Mr. Law would not pay, or even promise to pay, me my wages due me, as I have stated, because I was a witness.

(Signed) HERMAN FISHER.

Sworn to and subscribed before me, this 24th January, 1859.

(Signed) R'D STILWELL,
U. S. Commissioner.

Charles Hillman, to the 8th x-interrogatory, answers: I have not, in any way, from anybody; Mr. Law pays my witness fees, expenses for attending to give my evidence. I think I can swear to the truth without being paid for it, and I know I won't swear to lies for any pay he can give me. I don't think lawyers have any business to put such questions, as to a man's color and whether he has been bribed or not, but as the court has allowed them I have answered them. I think I am a sailor; I am as respectable as any lawyer in New
191 Orleans; I live at No. 19 West street, New York.

(Signed) CHARLES HILLMAN.

Sworn to and subscribed before me, this 27th May, 1859.

(Signed) R'D STILWELL,
U. S. Commissioner.

(Certificate to commissioner's certificate and signature on page 3d.)

192 **Exhibits annexed to and referred to in depositions for claimant of John C. Eilers, Philip Myers, Herman Fisher, Ch's Hillman, taken at New York city Jan'y 24th and 27th, and May 27th, 1859, and identified by attestation of R. E. Stilwell, U. S. Commissioner.**

EXHIBIT A.

List of persons, crews of "Grapeshot," from the time she left New York in Feb'ry, 1857, *till end of voyage at New Orleans, June* 18, 1858.

No.	Names on crew-list, &c.	Names used on board or claimed by them.	Stations in bark.	When or where shipped or enter'd.	When and where left or discharged, &c.
1	Jos. S. Clark		Master	Febr'y, 1857, New York	New Orleans, June, 1858.
2	Jos. F. Allen		1st Mate	do	Constantinople, April, 1857. Discharged.
3	Geo. Demare		2d mate	do	Constantinople, April, 1857. Discharged.
4	Phillip Massurdo	Mayers	Seaman	do	New Orleans, June 15, 1858. Discharged. Voyage ended.
5	John C. Erleans	Eilers	do	do	New Orleans, June 15, 1858. Discharged. Voyage ended.
6	Jas. McAines	Mac or Mike	do	do	Lost overboard at sea, on voyage to Constantinople, in spring of 1857.
7	Char's Wellman	Hillman	2d mate	do	New Orleans, June 15, 1858. Discharged. Voyage ended.
8	Cevas Gaycidt	Jack or Cyrus	Seaman	do	Constantinople, spring 1857. Left or discharged.
9	Wm. Burke	Bill	do	do	Constantinople, spring 1857. Left or discharged.
10	Geo. Cook		do	do	New Orleans, June 15, 1858. Dischaaged. Voyage ended.
11	Negro, name unknown		Cook and stewart	do	New York, Feb'ry, 1857. Ran off before bark sailed.
12	White man, Scotia, unknown		do	do	Constantinople, spring 1857. Imprisoned and discharged.
13	Ballard Sharps		1st mate	Spring, 1857, Constantinople	Rio Janeiro, fall 1857. Discharged.
14	Herman Fisher		Seaman	April, 1857, Constantinople.	Rio Janeiro, Oct. 26, 1857. Left, being dissatisfied.

15	Jack Moore		do	do	Rio Janeiro, Oct. 26, 1857. Left, being dissatisfied.
16	James Yaroni	Little Jim	do	do	Rio Janeiro, Oct. 26, 1857. Left, being dissatisfied.
17	Geo. Hansen, a Dane		Boy	do	Sent from bark to hospital in Febr'y, 1858, and died there, Mar., 1858.
18	Henry Pierce, negro	Price	Cook and stewart	do	New Orleans, June 15, 1858, or later. Discharged. Voyage ended.
19	Jas. F. Perkins		2d mate	Oct. 31, '57, Rio Janeiro	Rio Janeiro, Jan'y, 1858. Lost 2 fingers, and sent ashore as disabled and discharged.
20	John Curn	Brown	Seaman	do	Rio Janeiro, Jan'y, 1858. Sent to hospital with swelled feet, and discharged.
21	P. C. Anderson	Peter	do	do	Rio Janeiro, Febr'y, 1858. Sent to hospital with fever, and died there.
22	Henry Wan	Bill Smith	do	do	Rio Janeiro, Jan'y, 1858. Left.
23	O. N. F. Statty		1st mate	do	Rio Janeiro. Left the bark in Febr'y, 1858, at Rio.
24	O. M. Corsey or Comegges		do	April, '58, Rio Janeiro	New Orleans, June 15, 1858. Discharged. Voyage ended.
25	Horsen Nugent		2d mate	Febr'y, '58, Rio Janeiro	New Orleans, June 15, 1858. Discharged. Voyage ended.
26	Wm. Joslins		Seaman	April, '58, Rio Janeiro	New Orleans, June 15, 1858, Discharged. Voyage ended.
27	Antonio Martenez	Hansen	do	do	New Orleans, June 15, 1858. Discharged. Voyage ended.
28	John Welch		do	do	New Orleans, June 15, 1858. Discharged. Voyage ended.

195 Exhibit A, referred to in Philip Myers' deposition, January 24th, 1859.
(Signed) R. STILWELL, *U. S. Com'r.*

196 EXHIBIT B.—*Copy of certified copy of account filed.*

Port charges and disbursements of American barque "Grapeshot," Capt'n Clark, from Cape Verde to this port with salt, and hence to New Orleans, with coffee.

To officer reporting the vessel	*$4	000
Custom-house entry as p. regulation	10	000
Translation of manuscript and copy	15	000
Conferring manifest and list of stores and taking out clearance, C.H	10	000
Fees to officers of discharge, and visit	80	000
Duties on extra stores	4	800
Labor, hire, discharging inward cargo		
Labor, hire, loading outward cargo	121	600
Boat ac. for boat's towing		
Lighterage account		
Estavidor's account	101	480
Clearance at Consulado	10	000
Anchorage dues and port charges	172	800
Consul's account for fees and advances $100, d. Ex. 1 $900	190	000
Cash advanced Capt., cash 2,256, 58,800; Mosand 204; dresses 120	58	800
	580	000
Ship chandler's ac. treitas 86 820		
197 Hobbs 186 760 } Esling	437	100
163 520	2,175	940
Account for rating chronometer	11	000
Towboat in $60; out $80; mooring $20	160	000
Doctors ac. for medidine, (C. A. Santos)	28	200
Butchers' account	212	380
Beef ac., Baldwin $88; $176; Capt Close $192 130	369	130
Advertising, $9 820; bread at Island Queen, $89 820	99	640
Paid mate $64 50 d. 2 Ex	129	000
Carpenter's ae. Hanah & McL., copper, &c., caulking, &c	13,065	260
	R's20,046	130
Oct. 31. Old ac. left over from this date	1,802	780
	21,854	910
Commission a. 2½ per cent. on 20,046 130	501	150
	R's22,356	060
Comm'r's ac. for 5 per cent. corn and B on 3,800 a. 55 Ex. 1 900, and primage	208	470
	R's22,564	530

E. & O. E.

RIO DE JANEIRO, 15*th April*, 1850.
(Signed) ROSTROM, DUTTON & CO.

* In the letter-press copy the column for reas is filled with three cyphers where there are none here.

CONSUDATE OF THE UNITED STATES,
At Rio de Joneiro.

Personally appeared William Wright, esq., one of the firm of
Rostrom, Dutton & Co., of this city, merchants, who, being
198 duly sworn, declared the annexed account by them subscribed
to be a true and genuine copy taken from their original books

of acc't the disbursements, port charges, &c., of American barque "Grapeshot," Clark, master.

Given under my hand and seal of office this 6th day of September, 1858.

(Signed) ROBERT G. SCOTT,
U. S. Consul.

Exhibit B.

Copy of certified copy of Rostrom, Dutton & Co. acc't, filed and notes of differences between it and letter-press copy.

Notes of differences and variations in letter-press copy.

"To this port with salt" in certified copy, not in the letter-press copy, and with 3,800 bags, omitted in said certified copy.

199 "List of stores and taken out" omitted here.

"Labor hire, discharging inward cargo," not in letter-press copy.

"Boat account for boats and towing," not in letter-press copy.

"Lighterage acc't," not in letter-press copy.

"And advances," not in letter-press copy.

In letter-press copy these charges are merely "cash advanced Capt., 2,638 800.

The charges for "advertising for bottomry 9,820" in letter-press copy is omitted here.

The charges for "bread purchased from Island Queen, 89,820," in letter-press copy, omitted here.

"Cash p'd mate $64 50 a $2 per dollar" omitted here, but contained in letter-press copy.

"Inward" and "outward" in letter-press copy.

Letter-press copy is C. A. Santos ac. medicine "and" 28,300 instead of 28,200.

Same in both accounts.

Cash paid Capt. Baldwin for beef $88 a. $2 176 000, in letter-press copy.

Cash paid Capt. Close for beef, 193 130, in letter-press copy.

"These two items as stated 'above' in note, are not in same phraseology or in same place" in letter-press copy. This item is
200 not in the same terms, nor in same place in letter-press copy.
See note above.

Commission, a. 2½ per cent. on B., 20,046 130 a "500 150" in letter-press copy.

"To brokerage on freight, 3,800 bags of coffee, a. 55c per bag, B. 5 per cent., 208 470," in the letter-press copy.

"Total in letter-press copy," omitted here.

Date in letter-press copy "16 April, 1858."

Signature in letter-press copy appears to be original, in different ink, and written in it.

EXHIBIT C.—No. 15.

No. 1.		*No.* 1.	
300 P'de Cafe 10 Pezos a Navio utra laodo en tierra enphla 3,800 a 21.	121 600	3,800 bags of coffee, 10 men the Am. vessel brought to wharf, total am't (3,800 a 21.)	

201

No. 2.		*No.* 2.	
"A Barca Americana "Grapeshot" Estivador Joas Jose Fixa saramaca de 3,800 (b'gs) coffee at 25	95 000	Amer. bark Grapeshot to the stevedore John Jose Fixio, loading 3,800 bags coffee, a. 25 p'r mil.	95 000
Mil 2 honna habatt asra aborda a 3,240 cadaran	6 480	2 men who worked on board, at 3 240 each	6 480
	101 480		101 480
"Reciby emporte de sentro a lima, Rio de Janeiro, 12 de Abril, 1858.		Re'c payment of the above, Rio Janeiro, 12 April, 1858.	

No. 3.		*No.* 3.	
RIO DE JANEIRO, 15 *de Abril*, 1858.		RIO JANEIRO, 15 *April*, 1858.	
Conta de auverageur et mais despezos de barca Americana Grapeshot, de 360 tonelados anchorague, 300 per tonelados	108,000	Bill of duty for casting anchor, and other expenses, of Amer. bark Grapeshot, of 360 tons, 300	108,000
		Duty on casting anchor, 300 reas per ton	108,000
Carta de Suado, despachante general	4,000	Bill of health, chief clearing clerk,	4,000
Sanda Case de Misiricordia	13,120	Hospital of Mercy	13,720
Secretaria de Marrinha pils pan.	6,720	Permit of the Secretary of the Navy	6,720
Sellas dos documentos et mais despezas	9,960	Stamps of the documents, and sundries	9,960
Corretagon	4,000	Brokerage	4,000
	145,800		145,800
Agencia	6,000	Agency	6,000
	151,800		151,800
202 To afretamento	7,000	1-5 on the freighting	7,000
	158,800		158,800
Capitania de porto	4,000	Port warden	4,000
	162,800		Rs 162,800
Recibe amporte Rio 15 de Abril, 1858, per Comdo, jr., at M. M. Jinto de Castello.		Received payment, Rio, 15 April, 1858, pp. Candido, Sr., at M. M. Tento Castello.	

No. 4.		*No.* 4.	
Rio, 12 de Abril, 1858, capitas de Amer. Grapeshot, a Joag Bap'ta de Freitas,		Rio, 12 of April, 1858. The capt. of the Amer. bark Grapeshot to Jaquin Bapteste Trietas,	
4 galoons dev'o deporto, 3,000	12,000	4 galls. port wine, 3,000	12,000
6 garrapas de cawhark	6,000	2 bottles cognac	6,000
1 garrape para a vinto	1,000	1 dimijohn for wine	1,000
	Rs 19,000		Rs 19,000

No. 5.		*No.* 5.	
Rio, 12 *Abril de*, 1858.		Rec'd 12 April, 1858.	
Barca Amer. Grapeshot *a* Joaqu Bapt. de [de] Frietas,	Dr.	Amer. bark Grapeshot to Jaquin Baptista de Frietas.	
2,000	13,500	150 mats, 200	13,500
Despacha	1,680	Clearance	1,680
2 ava de azuear fina, 6,000	12,000	2 arobas white sugar	12,000
500 sevollas	10,000	500 onions	10,000
5 jacas de batatas	25,000	5 loads of potatoes	25,000
1 pate de sal fina	640	1 pot refined salt	640
2 verdas de mortado	2,000	2 pots mustard	2,000
203 1 as de vellas	1,000	1 do of candles	1,000
2 garrifas de agente fino	2,000	2 bottles best oil	2,000
	67,820		67,820
	19,000		19,000
	Rs. 86,820		Rs. 86,820

No. 6.

Barque Grapeshot to George Hobcs, Dr.

1858.			
Jan'y 2.	1 hamper potatoes, 5 500; 1 spittoon, 1,300	1	6,800
3.	Boat hire	2	1,000
11.	3 doz. eggs, 900	3	1,800
"	25 oranges and bananas	4	2,400
14.	4 large brooms, 500	5	2,000
16.	100 onions	6	1,500
24.	18 oranges and bananas	7	200
28.	2 doz. eggs, 840	8	1,680
Feb'y 7.	2 box seidletz	9	1,000
10.	Medicine	10	4,200
15.	Nutmegs, 80	11	1,400
20.	3 lbs. butter, 1,280	12	3,840
22.	25 lbs. black lead paint, 280	13	7,000
	25 do white lead, do	13½	7,000
	4 galls. raw oil, 3	14	12,000
	1 lb. brown sugar, 160	15	1,600
	1 doz. eggs	16	1,000
	4 lbs. yellow sugar, 160	17	640
204	7 lbs. sheet lead, 240	18	1,680
	Negro hire	19	160
	Mending a coffee pot	20	320
	do soup ladle	21	320
24.	1 keg white lead, 25 lbs., 280	22	7,000
	1 tin Prussian blue, ¼ lb	23	200
25.	1 gal. molasses	24	1,100
	5 lbs. refined sugar, 240	25	1,200
	½ do ground cinamon	26	800
	½ gallon turpentine	27	1,600
	Mending a soup tureen	28	320
26.	1 hamper potatoes	29	5,000
	1 pound ground pepper	30	720
	Medicine, 13th	31	1,500
Mar. 2.	2 boat line with a letter	32	1,000
3.	5 lbs. refined sugar, 240	33	1,200
1858.			
Mar. 3.	5 lbs. brown sugar, 160	34	800
	3 do butter, 1,280	35	3,840
	Boat line, with a letter	36	1,000

Mar. 5.	1 bottle sweet oil	37	1,000
	2 lbs. candles, 1	38	2,000
	2 do black tea	39	2,500
8.	Postage on a letter	40	1,120
10.	1 hamper of potatoes	41	5,000
	5 lbs. brown sugar, 160	42	800
	Negro hire	43	120
15.	5 lbs. refined sugar, 240	44	1,200
	5 lbs. brown sugar, 160	45	800
205	3 lbs. butter, 1,280	46	3,840
	½ do sulphur	47	160
April 10.	Vegetable acc't, 12	48	12,000
	Butcher's acc't	49	66,600
			Rs. 186,760

E. & O. E.
Rio de Janeiro, 12 April, 1858.

Captain Clark, "Grapeshot,"
To Norris & Son, Dr.

To rating chronometer No. 323, (2 months,)	10 000
" repairing quadrant	1 000
	11 000

No. 8.

The consignees of the American bark "Grapeshot,"
To the proprietor of the steam tow-boat, Dr.

1857.		
Aug. 13.	For harbor tonnage from port to discharge	20,000
	For do from discharge to Baster's wharf	20,000
	Towing out	80,000
		120 000

No. 9.

No. 10 Rua Deveita, Rio de Janeiro, 15*th April*, 1858.

206 Barque "Grapeshot bought of C. H. Santos, chemist and druggist.

1858.		
	3 bottles turpentine mixture	12 000
	3 do bismuth do	9 000
	1 do castor oil do	2 000
	2 do bitter	2 000
	6 dose calomel and jalap	1 000
	6 blue and quinine pills	1 000
	1 bottle C. of magnesia	1 000
		Rs. 28 200

No. 10.

		Rio Janeiro.—Barca Americana Grapeshot a Joas Antonio Baptista Deoe.		Amer. bark Grapeshot to John Antonio Baptista Deoc.	
1	Jany 31.	16 lbs. carne verde, 200	3,200	16 lbs. fresh meat, 200	3,200
2		4 do de lambo, 320	1,280	5 do lamb, 320	1,280
3		Verduras	80	Vegetables	80
4	Fev'r. 1.	6 lbs. de carne, 200	1,200	6 lbs. meat, 200	1,200
5		Seballas	320	Onions	320
6	2.	25 lbs. de carne, 200	5,000	25 lbs. fresh meat, 200	5,000
7	4.	15 do de porco, 200	5,600	15 do pork, 240	5,600
8		Verduras	40	Vegetables	40
9	5.	10 lbs. carne porco, 240	2,400	10 lbs. pork, 240	2,400
10		12 ovas	960	12 eggs	960
11	6.	15 lbs. carne verde, 200	3,000	15 lbs. fresh meat, 200	3,000
207 12	Feb. 6.	2½ lbs. carne de porco, 240	600	2½ lbs. pork, 240	600
13		Seballas	160	Onions	160
14		Verduras	80	Vegetables	80
15	7.	6 lbs. carne de porco, 240	1,440	6 lbs. pork, 240	1,440
16		2 do de barha, 400	800	2 do lard, 400	800
17	8.	Seita	240	Milk	240
18	8.	5 lbs. de carne verd, 200	1,000	5 lbs. fresh meat	1,000
19		5 do de porco, 240	1,200	5 do pork	1,200
20		1 carrafa de seito	320	1 bottle milk	320
21		Verduras	80	Vegetables	80
22		Seballas	80	Onions	80
23	9.	6 lbs. de carne de porco, 240	1,440	6 lbs. pork, 240	1,440
24		1 carrafa de seito	320	1 bottle milk	320
25		9 lbs. de carne verde	1,800	9 lbs. fresh meat, 200	1,800
26		12. ovas	960	12 eggs	960
27		Verduras	80	Vegetables	80
28	11.	6 lbs. de carne verde, 200	1,200	6 lbs. fresh meat	1,200
29		1 rum	320	1 kidney	320
30		Verduras	40	Vegetables	40
31	13.	4 lbs. de carne porco, 24	960	4 lbs. pork	960
32		1 do de barha	400	7 do lard	400
33		Verduras	40	Vegetables	40
34		6 lbs. de carne porco, 240	1,440	6 lbs. pork	1,440
35		Seballas	80	Onions	80
36	15.	7 lbs. de carne verde, 200	1,400	7 lbs. fresh meat, 200	1,400
37		Verduras	80	Vegetables	80
38	16.	7 lbs. carne verde, 20	1,400	7 lbs. fresh meat	1,400
39		4 do do porco, 24	960	do porc	5 960
208 40	Feb. 16.	3 de barha, 400.	1,200	3 lbs. lard, 400	1,200
41		Verduras	80	Vegetables	80
42	18.	7 lbs. carne de porco, 240	1,680	7 lbs. pork, 240	1,680
43		Verduras et seballos	100	Vegetables and onions	100
44	18.	7 lbs. carne verde, 200.	1,400	7 lbs. fresh meat, 200	1,400
45		4 " " porco, 240.	960	4 lbs. pork, 240	960
46		1 carrafa de seita	320	1 bottle milk	320
47	19.	2 lbs. de lambos de porco, 320	640	2 lbs. pork, 320	640
48		5 lbs. de carne verde, 200	1,000	5 fresh meat, 200	1,000
49		1 jacos de batatas	5,500	1 large m. potatoes	5,500
50		100 seballos	1,920	Onions	1,920
51		Verduras	80	Vegetables	80
52	20.	8 lbs. de carne verde, 200	1,600	8 lbs. fresh meat, 200	1,600
53		½ garrifa de leik	160	½ bottle milk	160
54	21.	6 lbs. de carne de porco, 240	1,440	6 lbs. pork, 240	1,440
55		Durheiro	20	Cash	960

56		7 lbs. de carne verde,			
		200	1,400	7 lbs. fresh meat, 200	1,400
57	22.	8 lbs. de carne verde	1,600	8 lbs. fresh meat	1,600
58		3 " " " porco,			
		240	720	3 lbs fresh pork, 240	720
59	23.	10 lbs. de carne porco,			
		240	2,400	10 lbs. pork, 240	2,400
60		Verduras	240	Vegetables	240
61		1 lb. de barha	400	1 lb. lard	400
62		1 carrafa de leik	320	1 bottle milk	320
63	24.	10 pounds carne verde,			
		200	2,000	10 lbs. fresh meat	2,000
64		1 carrafa de leike.	320	1 bottle milk	320
65		Verduras	60	Vegetables	60
66	25.	8 lbs. de carne verde,			
		200	1,600	8 lbs. fresh meat	1,600
	67	1 carrafe de leike	320		
209	68	3 bls. lambo de porco,		1 bottle milk	320
		320	960		
69	26.	8 lbs. de carne verde,		3 lbs. pork, 320	960
		200	1,600	8 fresh meat, 200	1,600
70		2 lbs. de barha, 400	800	2 fresh lard, 400	800
71		1 carrafa de lieke.	320		
72	27.	6 lbs. de carne de porco,		Butter milk	320
		240	1,440		
73		5 lbs. de carne verde,		6 lbs. pork, 240	1,440
		200	1,000	5 lbs. fresh meat, 200	1,000
74		1 carrafa de leike	320	1 bot'l milk	320
75		Batatas	440	Potatoes	440
76	1858.	Verduras	240		
77	Feb. 28,	9 lbs. carne de porco,		Vegetables	240
		240	2,160	9 lbs. pork, 240	2,160
78		Bananas	220	Bananas	220
79		1 carrafe de leite	320		
80		5 lbs. de carne verde,		1 bot'le milk	320
		200	1,000		
81	Mar. 1,	14 lbs. de carne verde,		5 lbs. fresh meat, 200	1,000
		200	2,800	14 lbs. fresh meat, 200	2,800
82		1 carrafa de leite	320	1 bot'l milk	320
83	2,	13 lbs. de carne verde	2,600	13 lbs. fresh meat	2,600
84		Ovase punns	980	Fresh eggs	980
85	5,	10 lbs. de darue porco	2,000	10 lbs. fresh meat	2,000
86		Pasee	1,000	Fish	1,000
87		Verduras	40	Vegetables	40
88		1 pas	200		
89	6,	7 lbs. de carue porco,		1 loaf bread	200
		240	1,680	7 lbs. pork, 240	1,680
90		Ovas	400	Eggs	400
91	7,	11 lbs. carue verde, 200	2,200	11 lbs. fresh meat, 200	2,200
92		Verduras, 1	160	Vegetables	160
93		Pasee	1,000		
94	8,	11 lbs. de carne de		Fish	1,000
		porco	240	11 lbs. pork, 240	264
	95	Ovas	1,500		
210	96 9,	10 lbs. de carne verde,		Eggs	1,000
		200	2,000	10 bbs. fresh meat, 200	2,000
97		2½ lbs. de carne porco	600	2½ lbs. fresh pork	600
98		Verduras	320	Vegetables	320
99		2 pans, 200	400		
100	10,	12 bls. de carne verde,		2 loaves bread, 200	400
		200	2,400		
101		3 bls. de carne porco,		12 lbs. fresh meat, 200	2,400
		240	720	3 lbs. fresh pork, 240	720
102		Passe	800		
103	11,	12 lbs. de carde porco,		Fish	800
		240	2,880	12 lbs. pork, 240	2,880

104		4 panis, 200	800	4 loaves bread, 200	800
105		Bananas	160		
106	12,	10 lbs. de carne porco,		Bananas	160
		240	2,400	11 lbs. pork, 240	2,400
107		4 panis	800	4 loaves bread	800
108		Alface	40	Salad	40
109		1 bf. de tarense	400	1 bf. fat of pork	400
110		Dinheiro	200		
111	13,	15 lbs. de carne verde,		Cash	200
		200	3,000	15 lbs. fresh meat, 200	3,000
112		Verduras	400	Vegetables	400
113		4 panis, 200	800		
114	14,	10 lbs. de carne verde,		4 loaves, 200	800
		200	2,000	10 lbs. meat, (fresh) 200	2,000
115		4 panis, 200	800	4 loaves, 200	800
116		Ovas	480		
117	15,	3½ lbs. de carne porco,		Eggs	480
		240	840	3½ pounds pork, 240	840
118		12 Ovas	1,000		
119	16,	8 lbs. de carne porco,		12 eggs	1,000
		240	1,920		
120	17,	7 lbs. de carne verde,		8 lbs. pork, 240	1,920
		240	1,400	7 lbs. fresh meat, 240	1,400
121		2 panis, 200	400	2 loaves, 200	400
122		Bananas	400	Bananas	400
	123	Verduras	320	Vegetables	320
211	124	1 trecura de porco	800	Pork liver	800
	125	Batatas	400		
126	18,	7 lbs. de carne porco,		Potatoes	400
		200	1,400	7 lbs. fresh meat, 200	1,400
127		Verduras	640	Vegetables	640
128		Pas	320		
129	19,	5 lbs. de carue verde,		Bread	320
		200	1,000	6 lbs. fresh meat, 200	1,000
130		2 panis, 200	400	2 loaves, 200	400
131		1 abrala	640	1 pumpkin	640
132		1 iaca de batatas.	5,500	1 man. potatoes	5,500
133		Durreiro	4,800		
134	21,	7 lbs. de carne verde,		Cask	4,800
		200	1,400		
135		5½ lbs. de carne porco,		7 lbs. fresh meat, 200	1,400
		240	1,320	5½ pork, 240	1,320
136		1 pani	200	1 loaf	200
137		Laranjas	640	Oranges	640
138		Bananas	160	Bananas	160
139		Durheiro	960		
140	22,	5 lbs. de carne verde,		Cask	960
		200	1,000	5 lbs. fresh meat, 200	1,000
140½		Laranjas	520	Oranges	520
141½	1858.	1 pani	200		
141	Mar. 23,	5 lbs. de carne porco,		1 loaf	200
		240	1,200	5 lbs. pork, 240	1,200
142		Verduras	160	Vegetables	160
143		1 pas	200		
144	24,	5 lbs. de carne verde,		1 loaf	200
		200	1,000		
145		5 lbs. de carne porco,		5 lbs. fresh meat, 200	1,000
		240	1,200	5 lbs. fresh pork, 240	1,200
146		Verduras	320	Vegetables	320
147		2 panis, 200	400	2 loaves, 200	400
148		Durheiro	1,120		
149	26,	10 lbs. de carne verde,		Cash	1,200
		200	2,000	10 lbs. fresh meat, 200	2,000
212	150	Bananas and saranjas	720	Bananas and oranges	720
	151	Durheiros	400	Cask	400
			159,960		159,960

No. 11.

RIO DE JANEIRO, 31 *de Jan.*, 1858.

Barca Americana Grapeshot a Joas Ant'o Baptista, Deoe.

Tella a jueb'a, carne verde, batata, pave, galentras, verduras, pas, pertas, and gno compraine de 31 Jan. a 8 Abril	191,580
Imparteme, de carne verde, verduras, y'ooas, que compode 9th a 13 Abrel	20,800
	212,380

No 11.

RIO JANEIRO, *Jan'y* 31, 1858.

Amer. bark Grapeshot to John Ant'o Baptista, Dr.

To fish, meat, potatoes, fish, chickens, vegetables, bread, and fruits from 31 Jan. to 8 April	191,580
Fresh meat, vegetables, bread, and eggs from 9th to the 13th of April	20,800
	212,380

No. 12.

Bark "Grapeshot" and owners,
To bark "Huntingdon" and owners. Dr.

To 4 bbl. beef, *a* $22 per bbl. $88 00

RIO DE JANEIRO, *Febr'y* 19, 1858.

Approved 19 February, 1858.
Received payment.

(Signed)
JOSEPH S. CLARK.

(Signed)
THOS. P. BALDWIN.

213 *No* 13.

Rec'd from Messrs. Rostrom & Dutton, on account of "Grapeshot," the sum of one hundred and ninety-three milreas one hundred and forty reas, as balance of bill due the "Morning Star."

$198 20.

(Signed)
EDWARD CLOSE.

RIO DE JANEIRO, *March 20th*, 1868.

(See Exhibit D, No. 7, 8, and 9.)

"Grapeshot."

No. 14.

Barque "Grapeshot,"
To ship "Island Queen," Dr.

931 lbs. bread, *a* 5 cts. per lb	$46 55
½ bbl. corn meal	4 00
1 keg lard, 20 lbs., *a* 11 cts. per lb	3 20
1 kit tongues and sounds	4 00
	57 75

Exchange, 1. 850.

Received payment.

(Signed)
A. C. RUGGLES.

214 *No.* 15.

Rio Janeiro, 1*st Mar.*, 1858.

Messrs. Rostrom, Dutton & Co. will please pay to A. W. F. Stoltz the sum of sixty-four dollars and fifty cents, being balance of wages due from bark "Grapeshot," and charge the same to the disbursements of said vessel, and oblige,

Yours, respectfully,

(Signed)

JOSEPH S. CLARK.

Rr. J.

Endorsed: Exhibit C. Copies of sundry bills against "Grapeshot" at Rio, from Jan'y 5th to April 17, 1858, in R. D. & Co. General account.

Exhibit D.—No. 1.

Barque "Grapeshot,"

To W'm P. Overman, Dr.

To a quantity of lumber 65.000

Received payment.

WM. P. OVERMAN.

Rio de Janeiro, *April* 12, 1858.

215 *No.* 2.

Barque "Grapeshot" and owners,

To Isaac de Stillmakee, Dr.

For repairing windlass and purchase 244.000

Received the above amount.

I. de STILLMAKEE, Jr.

Rio de Janerio, *February* 9, 1858.

No. 3.

Rio de Janeiro, 27 *Mar* 1858.

Capt. Clark

Bo't of John G. Harvey.

In action on board the Henry Guild, lot 35, 1 lb. com'r, for ..	R's3.000
Com'n, 5 p.c	160
Duty	900
	4.070

Rec'd the above.

P'r G. G. HARVEY.

(Signed)

CH'S ROSCO.

Exhibit D.

(Signed)

Rr. STILWELL,
U. S. Com'r.

No. 4.

RIO DE JANEIRO, 7 *Janverio,* 1858.
Sam'l Southern, Rua das
216 Pinadores entregau a siu
Capitas Clark $ a Durheiro in acto de entregua—

2.	1 vergt's de joanette	f. 12,000
35.	1 reloger..	1,000
36.	1 lote cenha.	6,000
		19,000
	Comn 5 p. c	950
	Disto 36 p. c	5,700
		R's 25$,650

RIO JANEIRO, 7*th* *Jan'y*, 1858.
Sam'l Southern, No. 26 Fiseronas street, has delivered to Cap. Clark, payable on delivery—

2.	**1 top-gallant yard**	**f. 12,000**
35.	**1 clock**	**1,000**
36.	**1 lot wood**	**6,000**
		19,000
	Commission 5 p. c	**950**
	Duty 36 p. c	**5,700**
		R's 25$,650

(No. 5.)

[No. 44.] Alfandega, Levvi 8 Linceira No. 198, Dia 9 Mai Janeno anno 1858 parra terra dig pabordo conduzo patrao de falica depois de confendo pelo Co Sr ma. beene chado o sequinto, 5 paus, sancora 3 pedacas de cabos, 5 banis contrusas, 6 baneas, 3½ peca de lanas, 18 vellas, 1 lot avos de vella, 1 barrico de cafe, 3 ricas macans siecas, 1 barril alcatras.
1 cairo medicina per hue-
217 centes as carregamento de
navio Augustin Heard entrado Calhao de Lima que vao desembarcar deima per terem pugo as derectos respectivas, conforme o despatcho No. 721, de 8 de corr'e esta tem effecto unicamente no dia de hope. Pode seguir 18 9-10 o inspector Jamu. Seamen escrebao des discarga Proncbl. confeir 18 9. 58 conferente Machado F.

[No. 44.] Custom-house lib. 8 permit, No. 198, on 9 Jan'y, 1858, the master of the launch take on board, after having been surveyed by officer Machado, the following articles: 5 yards, 1 anchor, 3 coils of rope, 5 barrels of paint, 6 spikes, 3½ pieces canvas, 18 sails, a lot of old cable, 1 barrel of coffee, 3 barrels dry apples, 1 barrel tar, 1 medicine chest belonging to the cargo of the vessel "Augustin Heald," entered from Callao of Lima, to be landed at the appointed time, having paid the duties as per docket No. 721 of the 8th instant. This is good only for this day. The inspector, Jam'r Seamen, may pass 18 9-10 58. The chief clerk Rich'd surveyed Machado F.

(No. 6.)

[L. S.]

[No. 45.] Alfandega lion 8, Licenca No. 201, Dia 9 mez Jan'y anno 1858, para terra conduz o patra de falica depois de confudo,

[L. S.]

[No. 45.] Custom-house, liber 8, permit No. 201, on the 9th January, 1858, p. dand the master of the launch takes, after be-

pelo C. o Sr Machado o sequinto Hana panis Hum religio, Huma parcas de lentra partementos as caregamento de mano "Augustin Heald" entrado de Calhao que vao desembarcar no hegar acunar par terem pago as dircibas
218 respectivos conformeo o despacho No. 721 8 de Cour. esta tem affecto unicamente no dia de hoje Pode Signio 18 9-10 58, o Inspector Aldoon, Escrivao da desceroga Buchs Conferi 18, 58. Conferente, Machado F.

ing duly surveyed by officer Machado, the following articles: A yard, a clock, a lot of wood "belonging to the vessel Augustin Heald," arrived from Callao, to be landed at the appointed place, having paid the duties as per docket No. 721 of the 8th inst. This is good only for this day. Surveyed 18 9-10 58. The inspector Aldoon may pass. The chief clerk, Buchro, surveyed 18, 58. Surveyor Machado, F.

(No. 7.)

Barca Grapeshot and owners
To Edward Close, Dr.

1	To 60 lbs. spun yarn, *a* 28 cts	$16 80
2	128 " 1½-in. hemp rope, 18	23 08
3	233 " manilla " 20	46 60
4	200 " lanyard " 18	36 00
5	180 y's cotton canvas, 39	70 20
6	1 topmast, 1 low, 1 top-gallant stay, and royal sail	150 00
7	1 hemp topsail	225 00
8	1 cotton topsail	200 00
9	1 top-gallant sail	45 00
10	1 top-gallant mast	18 00
11	2 bbls. flour, at $11	22 00
12	2 hogs, *a* 9 each	18 00
13	6 cans preserved meat, *a* $3	18 00
14	1,000 feet lumber	40 00
		928 60

Rec'd payment,
(Signed) EDWARD CLOSE.
Rio Janeiro, *March* 15*th*, 1858.

219 (No. 8.)

Barque Grapeshot and owners
To Barque Morning Star, Dr.

1	To two boxes flour, 11 000 each	22 000
2	one " codfish	5 000
3	two coils spun yarn	4 000
		34 000
	Auctioneer's commission, 750	1 700
		35 700

Rece'd payment,
(Signed) EDWARD R. CLOSE.
Rio Janeiro, *April* 2d, 1857.

Rec. 179—11

(No. 9.)

Bark Grapeshot and owners
To Bark Morning Star, Dr.

To two tons coal, *a* 32 000, equal to 25.50	64 000

Received payment,
(Signed) EDWARD CLOSE.
Rio de Janeiro, *Oct.* 31st, 1857.

220 [See also ante Mo 13.]

(No. 10.)

Barque Grapeshot and owners, Captain Clark, bought of Esling & Alvaranges, No. 7 Rua Fresca:

1	August	8	1 box segars	3 000
2			Boat-hire	3 000
3		10	Do	1 000
4		11	1 doz. eggs, 880	1 700
5			Boat-hire	2 000
6		12	10 lbs. brown sugar, 160	1 000
7			1 " ground pepper	640
8			6 nutmegs	360
9			1 lb. birdseed	320
10			1 " salaratas	800
11		17	1 tin clams	1 800
12			1 bottle spirit wine	1 200
13			Boat-hire	3 000
14		18	Cash to Captain Ringot	12 000
15			1 hamper yams	4 800
16			Cash to Capt. Clark	9 800
17		19	2 doz. eggs, 880	1 760
18			Washing	3 000
19			Boat-hire	1 500
20		20	1 gallon sweet oil	3 500
	21		1 box segars, mate	3 000
221	22		Boat-hire	4 000
	23	21	5 lbs. refined sugar, 220	1 000
24			2 bottles ale, 800	1 600
25			1 do. brandy	2 000
26	August	22	2 bundles segars	640
27			Am't butcher's acc't	29 720
				Rs 98 100

Received the above.
(Signed) ESLING & ALVARANGAS.
Rio de Janeiro, *August 23d,* 1857.

(No. 11.)

Rio de Janeiro, 31 *October*, 1857.

Bark Grapeshot bought of Esling & Alvaranges, No. 7 Rua Fresca:

1	1 pair pants for Geo. Anderson	1 200
2	1 shirt "	1 200
3	1 flannel shirt "	3 000
4	1 black hat "	5 000
5	2 gals. vinegar	1 800
6	Washing	2 000
7	3 lbs. tobacco for Geo. Cook, 1 600	4 800

	8	4¾ lbs. soap for Geo. Cook, 160	760
	9	2 " tobacco, John Hilars, 1 600	3 200
	10	4¾ " soap, 160	760
	11	2 " tobacco for Felix Meyer	3 200
	12	4¾ " soap ditto	3 200
222	13	1 shirt ditto	760
	14	1 pair cloth pants ditto	11 000
	15	1 doz. matches for negro cook	480
	16	1 " pipes ditto	480
	17	1 " matches, Felipe Meyer	480
	18	1 " pipes, ditto	480
	19	1 ditto Eilers	480
			Rs. 42 680

Rec'd payment.

By ESLING & ALVARANGES.
(Signed) J. A. M. NEVENTT.
RIO DE JANEIRO, 1*st* *Nov.*, 1857.

(No. 12.)

RIO DE JANEIRO, 2 *Nov.*, 1857.

Bark Grapeshot bought of Esling & Alvarangas:

3	9½ lbs. soap, 160	1 520
1	½ " allspice	400
2	1 doz. nutmegs	720
		2 640

Received payment.

By ESLING & ALVARANGES.
(Signed) J. A. M. NEVENT.

223

(No. 13.)

RIO DE JANEIRO, 1 *Nov.*, 1857.

Capt. Clark, bark Grapeshot, bought of Esling & Alvarangas, No. 7 Rua Fresca:

1	Nov. 1	1 barrel tar	21 000
2		12 gall. varnish, 1 700	20 400
3		10 lbs. cotton twine, 1 400	14 000
4		21 fathoms 4½-in. hemp rope, 105 lbs., 360	41 400
5		1 side rigging leather	7 000
6		1 bolt cotton duck, 64 yrds, 640	40 960
7		6 gals. boiled oil, 3	18 000
8		3 " sperm " 4	12 000
9		50 lbs. refined sugar, 260	13 000
10		1,000 sticks firewood	38 000
11		Duties on wood	2 700
12		Boat hire	3 000
			Rs. 231 640

Received payment.

Pr ESLING & ALVARANGES.
(Signed) ISAAC DE SILVA.
RIO DE JANEIRO, *Nov.* 1*st*, 1857.

(No. 14.)

Rio de Janeiro, 18 *April*, 1858.

Bark Grapeshot, Capt. Clark, bought of Eslnig & Alvaranges,
224 No. 7 Rua Fresca:

1	April 19	1 barrel beef	55 000
2		1 do. pork	65 000
3		108 lbs. refined sugar, 360	28 080
4		2 jars pickles, 1 200	2 400
5		17 lbs. hide rope, 1	17 000
6		1 kit mackarel	9 000
7		1 signal lantern	22 000
8		3 galls. sperm oil, 4	12 000
			Rs. 231 000

Received payment.

Per ESLING & ALVARANGES.
(Signed) ISAAC DE SILVA.
Rio de Janeiro, 19 *April*, 1858.

[A copy is not made of the bill of said firm for rs. 1 121, $850, receipted April 17, 1858. See Exhibit "E" for its contents.]

Endorsed: Exhibit D. Copies of sundry bills *vs.* Bark "Grapeshot" while at Rio, in 1858, not mentioned in R. D. & Co's account, No. 1 to 7 inclusive; and also copies of sundry bills of C. Close and Esling & Alvarangas *vs.* Barque, between Aug. 1, 1857, and Jan'y 1st, 1858, from 8 to 14 inclusive; also copy of bill of E. & A. *vs.* Barque, April 19, 1858. 225

226 to 233 in.

Exhibit E.—Copy of certified ac.

Bark Grapeshot, Clark,
Bought of Esling & Alvaranges, No. 7, Rua Fresca, 1858.

1858.						
Jan'y	5	1 boat hire	1,000	1		[Notes of discrepancies between it and act. R. 1121 850 receipted April 17, 1858.] Engraved heading in bill for R. 1121 850 like this.
	6	6 lbs. cast nails, 244,	1,440	2		
		1 straw hat, carpenter	300	3		
		1 do. do. 2d mate	5,000	4		
	7	500 sticks wood	14,500	5		
	8	1 straw hat, cook	3,000	6		
		1 do. Filmyer	800	7		
		14 lots metal brads	2,500	8		
		2 brass hooks	640	9		
		6 nutmegs	360	10		
		1 bath brick	240	11		
		1 lb. saleratas	800	12		
	9	1 bottle copal varnish	20,400	13		
	11	1 bolt cotton canvas, No. 6, 106 yds, 900	95,880	15	....	Wrong, if furnished; amount overcharged according to price stated.
	9	1 boat hire	2,000	14		
	11	1 coil, 4 in manilla, 464 lbs, 440	213,840	16	....	Wrong, if furnished; amount overcharged according to price stated.
		8 gals. boiled oil, 3	18,000	17		
	12	2 shirts, steward	2,800	18		
		1 pair pants	1,400	19		
		1 boat hire	2,000	20		
	16	1 hamper potatoes	5,500	21		
		2 gals. boiled oil, 3	6,000	22		
	18	1 boat hire	3,000	23		
	19	25 lbs. brown sugar, 180	4,500	24		
		5 pipes water, 1,200	6,000	25		
	22	25 lbs. refined sugar, 240	6,000	26		
		1 boat hire, 2	2,000	27		
	23	200 nails, 700	1,400	28		
	25	1 hamper potatoes	5,500	29		
	26	10 lbs. brown sugar, 180	1,800	30		
					411. 100	

Exhibit E.—Continued.

Jan.	27	1 pair slippers, steward	1,200	31		
		1½ lbs. soap, Anderson	600	32		
	28	1 lb. beef	42,000	33		
		1 hamper potatoes	5,500	34		
	29	29 1 pairs slippers, Anderson	1,200	35		
		1 straw hat, do	1,200	36		
		2 woolen shirts, mer., 4	8,000	37		
	30	2 coils, 2½ in manilla rope, 367 lbs., 440	161,480	38		
		84 lbs. hemp rope, 260	30,240	39		
		1 side rigging leather	8,000	40		
		1 tin pot, J. E. Ellis	320	41		
		1 straw hat do	800	42		
		2 woolen shirts, J. Carrer, 2,500	5,000	43		
		2 do do do. 1,500	3,000	44		
		2 pair shoes, do. 4	8,000	45		
		2 do. pants, do. 1,200	2,400	46		
		2 do. do. do.	2,400	47		
Feb'y	1	1 bl. pork	60,000	48		
		Duty on pork	3,260	49		
		12 lbs. verkigris, 1	12,000	50		
		2 gals. sperm oil, 4	8,000	51		
		500 sticks, wood	14,500	52		
		40 lbs. spun yarn, 480	19,200	53		
		64 lbs. ratling stuff, 480	30,720	54		
		73 lbs. manilla, 400	32,120	55	....	Wrong if furnished; amount overcharged according to price stated.
		Lampblack	960	56		
		1 boat hire	2,000	57		
	2	1 hamper potatoes	5,500	58		
		¼ lb. spice	1,000	59		
		1 lb. soda	1,200	60		
	3	1 boat hire	1,000	61		
		2 pipes water, 1,200	2,400	62		
		25 lbs. brown sugar, 180	4,500	63		
		15 lbs. refined do. 220	3,300	64		
					894,100	

	4	1 boat hire, 1,200	1,000	65		
	6	12 pipes water	14,400	66		
		Cash paid laborer	17,500	67		
		Do. do. mates	5,000	68		
	8	4½ pipes water, 1,200	5,400	69		
		1 lb. black tea	2,400	70		
		3 lbs. butter	3,000	71		
		1 hamper potatoes, 1	5,000	72		
					947.800	Amount to be brought forward up to this date is less than r's 367.600. The foregoing aggregates, in this and other accounts meant as duplicates of this Esling & Alvaranges are obviously false and fraudulent,
		5 gals. tar	4,000	73		
		5 " bright varnish	8,000	74		
		1 boat hire	1,000	75		
	9	Medicine	5,000	76		
		Repairing tin ware	3,600	77	....	Wrong if furnished, and amount charged falsely and fraudulently altered.
		1 straw hat, steward	6,000	78		
		Clothing	113,000	79		
		16 in. double block	2,400	80		
	12	1 bott. castor oil	2,000	81		
		Medicine.	4,400	82		
		15 lbs. rice, 130	1,950	83		
					1099.150	Wrong if furnished; quantity and amount falsely and fraudulently altered.
			151,350			
	15	1 doz. pipes, Ellis	480	84		
	16	Medicine	1,640	85		
	17	5 gals. boiled oil, 3	15,000	86		
		5 lbs. refined sugar, 220	1,000	87		
		5 " brown do. 180	9,000	88	....	Wrong if furnished, and amount falsely and fraudulently altered.
	20	1 boat hire, 1	1,000	89		
March	1	500 sticks wood	14,500	90	....	Wrong; entire charge falsely and fraudulently interpolated; not furnished.
		2 bells	36,000	91		" " "
		64 lbs. putty	12,800	92		
		32 " oakum	3,840	93		
					1194.410	Wrong if furnished; amount overcharged falsely and fraudulently altered, and as shown by two other bills.
	10	Medicine	1,200	94		
	15	3 barrels pitch, 12	36,000	95		
		1 boat hire	2,000	96		
	18	1 boat	2,000	97	....	Wrong; both charges falsely and fraudulently interpolated; not furnished.
	20	1 "	2,000	98		

Exhibit E.—Continued.

Mar	25	3 gals. boiled oil, 3	9,000	99		
		2 do. sweet do	7,000	100		
	26	10 lbs. refined sugar, 220	2,200	101		
		Cash paid pigs	8,000	102		
		1 boat hire	1,000	103		
		1 hamper potatoes	5,500	104		Wrong; this entire charge falsely and fraudulently interpolated; not furnished.
	30	1 doz. fowls	18,000	105		
	31	1 boat hire	1,000	106		
April	3	1 do do.	3,000	107		
	5	1,500 sticks, wood, 29.	44,000	108		Wrong if furnished, am't overcharged, and quantity and amount falsely and fraudulently altered. By one bill increased r's 350, and by another r's 4,000.
		Duty on do	2,400	109		
		1 boat hire	2,000	110		
	6	1 bag corn	8,120	111		Wrong if furnished; falsely and fraudulently altered as to article and amount.
	7	2 lbs. Hyson tea, 2,500	5,000	112		
		3 " black do., 2,000	7,200	113		Wrong if furnished; amount overcharged according to price stated in certified col.
		15 butter, 1.280	19.200	114		Wrong if furnished; amount overcharged according to price.
		6 verdigris, 1	6.000	115		
		17 spun yarn, 480	8.160	116		
		500 sticks firewood, 40	20.000	117		
		1,000 do 40	40.000	118 }		{ Wrong if furnished; falsely and fraudulently altered as to quantity and amounts.
		600 mats, 9	54.000	119 }		
		Duty on wood and mats	8.600	120		Wrong if furnished; charge falsely and fraudulently altered.
		Boat hire	2.000	121		
	9	Febon line with wood and mats	6.000	122		
		Boat hire	2.000	123		
	10	do	2.000	124 }		{ Wrong if furnished; falsely and fraudulently altered, as appears by the bills in ration to last item.
		do	2.000	125 }		
	12	Hospital fees 2d mate	16.000	126 }		
		40 galls. molasses	40.000	127		Wrong if furnished; falsely and fraudulently altered in quantity and amount.
					1887.790	
		20 lbs. butter	1.887	790		Wrong if furnished; falsely and fraudulently altered in quantity and amount.
		½ ground pepper	320	129		
		6 nutmegs	360	130		
		2½ lbs. saleratus	2,000	131		

		Soda	1.500	132		
		½ box raisins	4.900	133		
April	12	5 galls. sweet oil, 3.500	17.500	134		
		1 ball lampwick	480	135		
		19½ lbs. soap	2.850	136		
May	12	6 doz. matches, 480	2.850	137		
		4 white mugs, 200	800	138		
		5 galls. vinegar, 900	4.500	139	....	Wrong if furnished; falsely and fraudulently altered in in quantity and amounts.
		6 knives and forks	2.800	140		
		2 deep plates	3.600	141		
		6 soupe spoons	1.440	142		
		30 lbs. spun yarn, 480	14.400	143	....	Wrong if furnished; falsely and fraudulently altered in quantity, price, and amount.
		8 lbs. hemp twine, 800	6.400	144	....	Wrong if furnished; falsely and fraudulently altered in quantity and amount.
		10 lbs. cut nails, 240	2.400	145		
		12 hanks	2.000	146		
		40 lbs. rattling stuff, 440	17.600	147	....	Wrong if furnished; falsely and fraudulently altered in quantity, price, and amount.
		41 lbs. ham, 560	22.960	148	....	Wrong; all these charges fraudulently manufactured and interpolated; none of the articles furnished.
		3 doz. fowls, 16	48.000	149		
		½ barrel mackerel, 2, 11	13.000	150		
		100 lbs. sugar, 180	18.000	151		
		12 doz. eggs, 1, ½	12.000	152		
		4 galls. sperm oil, 4	16.000	153		
		5 lbs. cotton twine 1.200	6.000	154		
		½ bushel white beans	3.400	155		
		1 can zinc paint, 25 lbs., 300	7.500	156		
		10 pipes water, 1200	12.000	157		
		Duties on stores	2.500	158		
	13	1 bushel corn	3.200	159		
		1 boat hire	2.000	160		
					1863.050	
	14	1 bath brick	240	161	....	Improperly charged here.
		64 lbs. codfish, 200	12.800	162		
		64 lbs. rice, 130	8.320	163		
		8 lbs. tobacco, Myer, 1.600	13.800	164	....	Wrong if furnished; amount overcharged.
		2 straw hats, 800	1.600	165		
		1 pair pants	1,500	166		

Exhibit E.—Continued.

May	14	2 doz. matches, 480	060	167	1902. 270	
			39. 220			
		1 woolen singlet	3. 500	168		
April	14	2 doz. pipes, 480	960	169		
		1,000 sticks firewood, 40	40. 000	170	----------	Wrong if furnished; falsely and fraudulently altered in quantity and amount.
		Duty on wood	3. 000	171	----------	Wrong if furnished; falsely and fraudulently altered in amount.
		1 boat hire	2. 000	172		
		50 pounds refined sugar, 320	16. 000	173	----------	All these charges falsely and fraudently manufactured and interpolated; none of the articles furnished.
		93 pounds hemp rope, 380	35. 340	174		
		1 b'l pork	60. 000	175		
		1 keg lard, 23 lbs., 400	9. 200	176		
		1 bolt hemp canvass	28. 000	177		
		1 coil 2¾ in. Manilla, 180 lbs., 440	79. 200	178		
		Rs.	275. 940	Rs.	2174. 470	

Received Payment.

(Signed) ESLING & ALVARANGES.

Rio de Janeiro, 16 *April*, 1858.

Onsulate of the United States at Rio de Janeiro.

I, the undersigned consul of the United States at Rio de Janeiro, do hereby certify the above signature of Esling & Alvaranges, of the city, to be true and genuine, and as such worthy of full faith and credit.

Given under my hand and the seal of this office this 6th day of Sept., 1858.

(L. S.) (Signed) ROB'T G. SCOTT, Jr.

It will be noted that the difference between the two bills
234 is nearly 100 per centum on the smallest bill, created by interpolations and alterations, and false additions, and even without the false additions of Rs. 1,470 in the certified copy filed.

	Rr. S.
The sum of Rs. 2,175,940 above given, as stated in the certified copy, as being the aggregate of said account, is incorrect, is a true copy, verb d-let of said bill. The addition of the above bill, as above shown, is	Rs. 2,174,470
It being less than the false addition	1,470
	Rs. 2,175,940
The aggregrate of another bill of same firm, dated Rio Janeiro, 14th April, 1858, not receipted, (having an engraved heading,) generally of same dates, and mostly same articles, but containing discrepancies and variances in many items, is also made by false addition to amount, to the sum of Rs. 2,175,940. The true addition to said bill is only	Rs. 2,173,940
It being less than the false addition	2,000
	Rs. 2,175,940
There are items omitted in the certified copy, above given, but contained in the bill (noted in the memoranda above, which bill is receipted April 17th, 1858) from its commencement, Februray 8th, 1858, up to and including April 14th, 1858, which items am't to	Rs. 26,060.
There are items in said said bill, receipted Aprill 7th, 1858, subsequent to April 16, 1858, not contained in said certified copy, and which items am't to	Rs. 41,430.
There are items in said certified copy, which the account itself shows to be erroneous according to the prices stated therein, vide memoranda above. They amount to	Rs. 12,630.

[*Receipt to bill for R.* 1,121,851.]

"Received payment, Rio de Janeiro, 17 April, 1858."

Pr. ESLING & ALVARANGES.
(Signed) P. C. POTSCH.

Items in certified copy of Esling & Alvaranges' account subsequent to change of "5 galls. tar," Feb. 8th, 1858, not contained in said bill, and not including exchanges or variances by alterations, but only these charges falsely and fraudulently interpolated in toto, amount to	Rs.	412,700

Items in said certified copy falsely and fraudulently altered as to quantity, price, or amount from bill receipted April 17, 1858, and memoranda of increase from February 8, 1858 to April 14, inclusive

1858.

Feb. 8, Amount of charges in certified copy to this date		947,800
Amount brought forward in said bill		467,600
Difference		580,200
Amount of the other items as aforesaid		124,980
	Rs:	704,980

Amount of bill receipted April 17th, 1858, as aforesaid		1,121,850
Deduct amount stated on the other side of items in this bill, ommitted in certified copy from Feb'ry 8th to April 14th, 1858, inclusive		26,060
Amount of the items deducted	Rs.	1,095,790
Deduct amount stated on the other side of items in this bill, omitted in certified copy, subsequent to April 14, '58		41,480
Amount of bill items deducted	Rs.	1,054,310

True addition of certified copy filed	Rs.	2,175,940
Deduct amount of bill of 1,121,850 after the preceeding directions		1,044,310
Difference	Rs.	1,120,160

False addition of certified copy filed	Rs.	2,175,940
Deduct am't of bill for Rs. 1,121,850 after the preceeding deductions		1,054,310
Difference		1,121,630

235 Endorsed: Exhibit E. Copy of Esling & Alvarange's acc't according to certified copy of libel and notes of discrepancies between it and acc't of Rs. 1121,850, receipted April 17th, 1858.

236 *Items in certified copy of Esling & Alvaranges' account subsequent to charge "of 5 galls. tar," Febr'y 8, 1858, not contained in the bill receipted April 17th, 1858.*

N. B. This does not include overcharges or variances by alterations, but only those charges falsely and fraudulently and interpolated in toto.

No.	1858.			Rs.	
90	March	1.	500 sticks of wood	14,500	
91			2 bells	36,000	
97		18.	Boat hire	2,000	
98		20.	Boat hire	2,000	
105	May & April	12.	41 lbs. ham, 560	22,960	
104		26.	1 hamper potatoes	55,000	
149			3 doz. fowls, 16	48,000	
150			12 doz. eggs, 1	12,000	
151			½ bbl. mackeral	13,000	
152			100 lbs. brown sugar, 180	18,000	
153			4 galls. sperm oil, 4	16,000	
173	April	14.	50 refined sugar, 220	11,000	
174			93 lbs. hemp rope, 380	35,340	
175			1 bl. pork	60,000	
176			1 keg lard, 23 lbs, 430	9,200	
177			1 bold't hemp canvass	28,000	
178			1 coil 2¾ in. manilla, 180 lbs., 440	79,000	
					412,700

Exhibit F.
(Signed) R'R S., *U. S. Comm'r.*

237 *Items in said certified copy falsely and fraudulently altered to quantity, price, or amount, from bill receipted April 17th, 1858, and mem'a of increase from Feb'y 8, 1858, to April 14th, inclusive.*

Amount of charges to this date	Rs.	497,800
Amount brought forward in said bill		367,600

No.	1858.			Rs.	
	Feb'y	8.	Difference	580,200	
77		9.	Repairing tin ware, altered in am't	040	
83		12.	15 lbs. wire, altered in quantity and am't	650	
88		17.	50 lbs. brown sugar, altered in quantity and am't	1,000	
94	March	10.	Medicines, altered in amount	200	
108	April	5.	1,500 sticks wood, altered in quantity and am't	4,000	
111		6.	1 bag corn, altered to article and am't	4,060	
113		7.	3 lbs. black tea, altered as to price	1,200	
114			15 lbs. butter, altered in quantity and am't	6,400	
118			100 sticks wood, altered as to quantity and am't	9,000	
119			600 mats, do. do. do.	9,000	
120			Duty on wood and mats, altered in am't	5,000	
124		10.	1 boat hire, altered in am't	1,000	
125			Boat hire, altered in am't	1,000	
127		12.	40 galls. molasses, altered in quantity and am't	35,000	
128			20 lbs. butter, altered in price, quant. and am't.	9,760	
139	May & Ap.	12.	5 galls vinegar, alt. in quant. and am't	1,850	
143			30 lbs. spun yarn, alt. in quant. and am't	2,400	
144			8 lbs. hemp twine, alt'd in quant. and am't	3,200	
	147		40 rattling stuff, alt. in quant., price and am't	7,500	
238	164		8 tobacco, Myer, altered in amount	1,000	
	170	14.	100 sticks firewood, altered in quant. and am't	20,000	
171			Duty on wood, altered in amount	1,500	124,780
			Amount		1,117,680

Items omitted in certified copy, but in the bill receipted Aug. 17. 1858, *prior to and including April* 14*th*, 1858, *subsequent to Feb'y* 8*th*, 1858.

1858.		Rs.	
March 26.	15 lbs. brown sugar, 180	2,700	
April 5.	Boat hire, difference in charge	2,000	
7.	5 lbs. litherage, 240	1,200	
12.	2 lbs. black tea, 2,400	4,800	
	1 tin prunes	7,000	
	1 bottle cayenne pepper	1,000	
	1 bass padlock	360	
	1 jar for butter	800	
	1 bag bran	5,000	
14.	Duty on stores	1,200	
			26,060

Items not in certified copy, but in bill receipted April 17*th*, 1858, *subsequent to April* 14*th*, 1858.

1858.		Rs.	
April 15.	1 large pipe, P. Myer	800	
	1 tin mug, J. Ellis	320	
	Medicines	18,000	
	1 doz. eggs	1,000	
	200 oranges, 2,500	5,000	
16.	6 rain brooms, 280	1,680	
239	1 hair seeve	1,200	
	18 sail needles, 60	1,080	
	5 bls. soap, cook, 200	1,000	
	1 boat hire	1,000	
	Butcher's ac't	10,400	
			Rs.41,480
			67,540

The bill for Rs. 1,121,850 is correctly added up, the certified copy appears to be incorrectly added up.

The false addition is	Rs.2,175,940
The true addition is of the certified copies	2,174,470
Difference	1,470

In another bill, by same firm, dated April 14, 1858, and commencing January 5, 1858, and ending April 14, which appears to be for the same articles, though the prices and amounts are variant in many instances, the aggregate is given (same)	Rs. 2,175,940
This is also falsely added, mis-stated, the true addition being	2,173,940
Difference	2,000

240 *Items in said certified copy which the accounts itself shows to be erroneous, according to prices stated therein.*

No.	1858.					
15	Jan'y.	11	1 belt cotton canvass No. 6, 106½ yards, 900 rs.	95,880	rs.	030
16	"	"	1 coil 4 in Manilla, 464 lbs., 440	213,840		9,680
55	Feb'y.	1	73 lbs. Manilla, 408	52,120		2,920
					Rs.	12,630

Endorsed: "Statement." "Exhibit F."

Annex X.

New Orleans, *June 6th*, 1858.

Mr. Law.

Dear Sir: The Grapeshot'' is at the quarantine, below the city, where she is to stop for two days for fumigation before she is permitted to come up.

I don't know if you received my letter from Rio de Janeiro to
insure the "Grapeshot" from that port to this. If, so, I wish you
would send me a copy of the policy. You was advised in my
241 last letter from Rio that I was obliged to bottomry the vessel
for a large amount. I will state to, as brief as possible, in my
last passage from the Cape de Verde the vessel got to leaking so
bad in a seray that it was with difficulty I kept her afloat. She had
so much water in her at times that the salt washed and melted away,
so that the cargo fell short between nine hundred and a thousand
bushels. I discovered she had worn off the copper in many places
the voyage previous, and she leaked so bad I was fearful she was
wormed, which proved to be the fact. When I hove her out at first
to look at her bottom, after getting her down I found the copper
entirely worn through, almost every sheet that was remaining; was
obliged to take it all off and put on other; also put a new sheer and
several engraving pieces, which has cost heavy, as you will find when
you see the accounts; but, sir, as much I have lost for the last two
years, I pledge you my word I will stick to you until I fetch her out
of debt, or so that you shan't loose nothing by me. I want her to be
kept fully insured in one of your offices, or I will insure her
242 in New Orleans, whichever you desire; but, first of all, this
bottomry has to be raised, and my affairs are in such a state,
in New Orleans that I can't possible raise the amount. You must,
therefore, send me the power to get the money, or send a special
agent out, and settle the thing up, as it will be a ruinous thing to
suffer her to be sold at this place, and at this season of the year, to
pay it; she would not fetch one half of her cost. My freight amounts
to some over two thousand dollars, and in order to get the money at
a less rate in Rio, I gave the bottomry on vessel and cargo. Twenty
days are allowed to take up the bottomry after her arrival in this
port, which will be from the 7th of June. Had I not of taken the
fever after the vessel was hove out I could have saved much; but I
was taken down, my mate was in the hospital and most of my crew.
I would like to settle this, that I might give you a more satisfactory
impression of her than you now most likely entertain. It remains for
you to decide in what way this very unfortunate business is to be
settled.

243 Very respectfully, your obedient servant.
(Signed) J. S. CLARK.
George Law, Esq., New York City.

"Endorsed:" From J. S. Clark, New Orleans, June 6, 1858, to George Law, New York.

True account of everyseaman employed on the barque "Grapeshot," from 4*th February,* 1861, *date she was last entered at New York, to this* 8 *June,* 1858, *when application was made for entry, at the port of New Orleans.*

Names.	Rank.	When engaged or last entered.	When disc'd or arrived.	Months.	Days.
B. S. Clark	Master	4 Febr'y 1859.	8 June, 1858.	16	04
J. F. Allen	1st Mate	Do	Do	‘‘	‘‘
G, Demane	2d do.	Do	Do	‘‘	‘‘
P. Mosando	Seaman	Do	Do	‘‘	‘‘
J. E. Eilers	Cook and stewart.	Do	Do	‘‘	‘‘
J. McAimes	Seaman	Do	Do	‘‘	‘‘
C. Wellman	Do	Do	Do	‘‘	‘‘
C. Lacyat	Do	Do	Do	‘‘	‘‘
244 W. Burts	Do	Do	Do	‘‘	‘‘
G. Cook	Do	Do	Do	‘‘	‘‘
				161	10

One hundred and sixty-one months and ten days, at 20 cents per month, is $32 27.

(Signed) JOSEPH CLARK.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, 24 *July,* 1858.

I, F. H. Hatch, collector of the customs for the district and port aforesaid, do hereby certify the within to be the duplicate deposited by the captain in the naval office.

(Signed) F. H. HATCH, *Collector.*

Endorsed: Hospital-money return. New Orleans. "Exhibit WW," No. 1, in Philip Myers' deposition. (Signed) Rr. Stillwell, U. S. Comm'r.

245 *Form No.* 109.—*Consul's certificate of the shipment of seamen or mariners attached to crew-list and shipping articles.*

CONSULATE UNITED STATES OF AMERICA, *April* 10*th,* 1858.

I, Robert G. Scott, jr., consul of the United States of America for Rio Janeiro and the dependencies hereinafter named, have been duly shipped at this port before me, upon the terms and conditions set opposite their names respectively, viz: to articles b'k "Grapeshot."

Names of seamen or mariners.	Station.	Month'y wages.	Advance wages.	Voyage.
O. M. Coney	Mate.	$40		
Hensen Nugent	2d.	25	20	To New Orleans.
William Johnson	Seaman.	18	18	
Antoniz Marting	Do	18	18	
John Welsh	Do	18	18	

Given under my hand and seal of this consulate the day and year above written.

[SEAL.] (Signed) ROBERT G. SCOTT, JR.,
U. S. Consul.

Endorsed: Exhibit W, No. 4, in Philip Mezer's deposition. (Signed) Rr. Stilwell, U. S. Comm'r.

246 DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, 24*th July*, 1858,

I, F. H. Hatch, collector of the customs for the district and port aforesaid, do hereby certify the within to be a true and correct copy taken from the original on file in this office.

(Signed) F. H. HATCH.

247 *From* 109.—*Consul's certificate of the shipment of seamen or mariners attached to crew list, and shipping articles.*

CONSULATE OF THE UNITED STATES OF AMERICA,
October 31*st*, 1857.

I, Robert G. Scott, Jr., Consul of the United States of America for Rio Janeiro, and the dependencies thereof, do hereby certify that the seamen or mariners hereinafter named have been duly shipped at this port, before me, upon the terms and conditions set opposite their names respectively, viz: to articles of b'k Grapeshot.

Names of seamen or mariners.	Station.	Month's wages.	Advance wages.	Voyage.
James F. Perkins	Seaman	$18	$18	
John Cur	"	16	16	
P. C. Anderson	"	16	16	
Henry Wau	"	16	16	
A. W. F. Stolktz	Mate.	30	--	

Given under my hand and the seal of this consulate the day and year above written.

[SEAL.] (Signed) ROBERT SCOTT, JR.,
U. S. Consul.

Exhibit VV, No. 3, in Philip Myer's deposition.
(Signed) Rr. STILLWELL, *U. S. Com'ner.*

248 DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, 24*th January*.

I, F. H. Hatch, collector of the customs for the district and port aforesaid, do hereby certify the within to be a true and correct copy taken from the original on file in this office.

(Signed) F. H. HATCH, *Collector.*

I, Joseph S. Clark, do solemly, sincerely, and truly swear that the within list contains the names of the crew of the barque Grapeshot, together with the places of their birth and residence, as far as I can ascertain the same.

Sworn this 4th day of July, 1857, before me.

(Signed) JOSEPH S. CLARK.
(Signed) M. HOFFMAN, *Collector*, *New York.*

249 I do certify that the within is a true copy of the list of the crew of the barque "Grapeshot," of New York, whereof Clark is master, taken from the original on file in this office.

Given under my hand and seal of office at the custom-house this 4th day of July, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.] (Signed) M. HOFFMAN.

I do hereby further certify that the within-named persons who compose the company of the above-mentioned bark, whereof Clark is at present master, have produced to me proof in the manner directed in the act entitled "An act for relief and protection of American seamen."

And pursuant to the said act, and to the act supplementary to the act concerning consuls and vice consuls, and for the further protection of American seamen, I do hereby certify that the said persons are citizens of the United States of America.

Given under my hand and seal of office this 4th day of July, 1857.

[SEAL.] (Signed) M. HOFFMAN.

250 *List of persons composing the crew of the barque "Grapeshot," of New York, whereof is master Joseph S. Clark, bound for Constontinople.*

Names.	Places of births.	Places of residence.	Of what country citizens or subjects.	Description of their persons.				
				Ag'd.	Height.		Complexion.	Hair.
					Ft.	In.		
Joseph J. Allen.	New York.	N. York.	U. States.	45	5	8	Light.	Light.
Geo. Demane	"	"	"	24	5	8	"	"
Philip Misando	"	"	"	41	5	8	Dark	Dark.
John C. Eilums	"	"	"	23	5	7	Light.	Light.
Jas. McArms	"	"	"	21	5	7	"	"
Char's. Wellman	"	"	"	29	5	10	"	"
Cevas Saycidt	"	"	"	26	5	6	"	"
Wm. Bards	"	"	"	25	5	8	"	"
Geo. Cook	"	"	"	23	5	8	"	"

Examined and found correct.

S. W. PASS.

JUNE 4th, 1858.
(Signed) G. M. BOWDITCH. *Bord'g officer.*

251 DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, 24 *July*, 1858.

I, F. Hatch, collector of the customs for the District and port aforesaid, do hereby certify the within to be a true and correct copy taken from the original on file in this office.

(Signed) F. H. HATCH, *Collector*.

Endorsed: Copy role d'equipage bark Grapeshot, of New York, from N. Y. to Constantinople February 4th, 1857, and *via*. different ports to New Orleans, June 6th, 1858. Exhibit VV, No. 2, in Philip Myers' depositions, signed Rr. Stillwell, U. S. Com'r.

252 *Exhibit K. K.*, *No.* 9.

CONSULATE GENERAL OF THE UNITED STATES, OF AMERICA,
Constantinople, the 9*th April*, 1857.

Barque Grapeshot, to U. S. Consul, Dr.

Deposite of papers, at ½ per cent. per ton	1 72
Noting protest	1 00
Imprisoning cook 4 days and releasing	1 00
Discharging stewards	0 50
Discharging 2 mates	1 00
Shipping 2 mates	1 00
Shipping steward and two men	2 50
Apper. for firman	1 00
Firman	4 00
Balance of fr't on sulky, and due bill of Mr. Sharp	2 50
	$15 72

Received payment.
(Signed) E. P. PETERS, *V. C.*

253 Endorsed: Exhibit KK., U. S. consul's acc't *vs.* Barque "Grapeshot."

254 Bought of Esling & Alvarenges:
No. 7, Rua Fresea.

1858.			
Febr'y	8.	Amount brought forward	367.600
	8.	5 gallons tar, 800	4.000
		5 A gallons bright varnish, 1.600	8.000
		Boat hire	1.000
	9.	Medicine	5.000
		Repairing coffee pots and tin plates	3.560
		1 hat, steward	6.000
		Clothing, steward	113.000
		1 6-inch double block	2.400

Feb.	12.	1 bottle castor oil	2.000
		Medicine	4.441
		10 lbs. rice, 130 ×	1.300
	15.	1 dozen pipes, Ellis	480
	16.	Medicine	1.640
	17.	5 gallons boiled oil, 3	15.000
		5 lbs. refined sugar, 220	1.100
		5 lbs. brown sugar, × 180	900
	20.	Boat hire ×	1.000
March	6.	Boat hire +	1.000
		64 lbs. putty, 200	12.800
		32 lbs. oakum, 120	3.840
	10.	Medicine	1.000
	13.	3 barrels pitch, 12	36.000
255		Boat hire	2.000
	25.	5 gallons boiled oil, 3	9.000
		2 gallons sweet oil, 3.500	7.000
	26.	10 lbs. refined sugar, 220	2.200
		15 lbs. brown sugar, + 180	2.700
		Cash paid for pigs	8.000
		Boat hire	1.000
		Cont'd	624.960
1858			
March	30.	1 doz. fowls	18.000
	31.	Boat hire	1.000
April	3.	Boat hire	30.000
	5.	1,000 sticks wood +	40.000
		Duty on do	2.400
		Boat hire	4.000
	6.	Cash paid for corn, +	4.060
	7.	2 lbs. Hyson tea, 2.500	5.000
		3 lbs. black tea, 2.400	7.200
		10 lbs. butter, + 1.280	12.800
		6 lbs. verdigris, 1.200	7.200
		17 lbs. spun yarn, 480	8.160
		500 sticks wood, 40	20.000
		1,000 do. +	31.000
		5,000 mats, + 9	45.000
		5 lbs. letherage, 340	1.200
		Duty on wood ×	3.600
		Boat hire	2.000
	9.	Salna hire, with wood	6.000
		Boat hire	2.000
256	10.	Boat hire +	1.000
		Boat hire +	1.000
	12.	Cash paid hospital, for 2d mate	16.800
		5 gallons molasses, + 1	5.000
		2 lbs. black tea, 2.400	4.800
		8 lbs. butter, + 1.280	10.240

April	12.	6 nutmegs, 60	360
		2½ lbs. saleratus, 800	2.000
		1 lb. soda	1.500
		1½ box rasins	4.900
		5 galls. sweet oil, 3.500	17.500
		Lampwicks	480
		1 bath brick	240
April	12.	19¼ lbs. soap, 200	2.850
		6 boxes matches, 480	2.880
		4 white mugs, 200	800
		3 galls. vinegar, + 900	2.700
		6 knives and forks	2.800
		2 deep plates	3.600
		½ doz. soup spoons	1.440
		1 tin prunes	7.000
		1 bottle Cayenne pepper	1.000
		25 lbs. spun yarn, + 480	12.000
		4 lbs. hemp, home, + 800	3.200
		10 lbs. cut nails, 240	2.400
		12 lbs. hanks	2.000
		28 lbs. rattling, + 360	10.080
		5 lbs. cotton twine, 1.200	6.000
257		½ bushel white beans	3.400
		1 brass padlock	1.360
		1 can zinc paint, 25 lbs, 300	1.500
		10 pipes water, 1.200	12.000
		Duty on stores	2.500
		1 jar for butter	800
	13.	1 bushel corn	3.200
		1 bag bran	5.000
		Boat hire	2.000
	14.	64 lbs. codfish, 200	12.800
		64 lbs. rice, 130	8.320
		8 lbs. tobacco, Philip Myers, 1.600	13.800
		2 straw hats, 800	1.600
		2 dozen matches, 480	900
		1 pair Bangaire pants	1.500
		1 woolen singlet	3.500
		2 dozen pipes, 480	960
		500 sticks wood +	20.000
		Duty on do +	1.500
April	14.	Boat hire, with wood	2.000
		Duty on stores	1.200
			Rs. 1,080.370
	15.	1 large pipe, P. Myers	800
		1 tin mug, I. Ellis	320
		Medicines	18.000
		1 doz. eggs	1.000
		200 oranges, 2.500	5.000

April	16.	6 kain brooms, 280	1.680
258		1 hair sieve	1.200
		18 sail needles, 60	1.080
		5 lbs. soap, cook, 200	1.000
		Boat hire	1.000
		Butcher's ac	10.000
			Rs. 1,121.850

Received payment.

Pr. SLING & ALVARENGAS.
(Signed) I. C. POTSCH.
RIO JANEIRO, 17*th April*, 1858.

Exhibit R. R. In deposition of Philip Myers.
(Signed) Rr. STILWELL, *U. S. Comm'r.*

CONSULATE OF THE UNITED STATES.

I hereby certify that I have this day delivered up to Joseph Clark, master of the barque Grapeshot, of New York, admeasured 345 2·95 tons, now cleared for the port of Cape of Good Hope, in the said United States of America, the register, crew-list, and duplicate, certified articles belonging to the said vessel.

259 Given under my hand and seal of office this twenty-ninth day of October, A. D. 1857.

[SEAL.] (Signed) ROBERT C. SCOTT,
U. S. Consul.

Exhibit O. O., No. 17. In Herman Fisher's deposition.
(Signed) Rr. STILWELL, *U. S. Comm'r.*

Endorsed: 136. Certificate, Rio, of clearance to Cape of Good Hope.

---

260 *Numero General. No. 33. General Fabrica de Sal de ibiza Forinentero. Provnicia de las Baleares.*

Dn. Manuel Valavino y Sellerees, administrador principal, Gefe de las Fabricas de sal de la provincia de las Baleares.

Modines de Fabrica.—Doy Gina al Capitan Tenieriano Dn. Jose S. Clark, que lo e de su bergantin barca Grapeshot, para que pueda conducir a Buenos Aires el cargo de sal que ha tomado de estas salinas consistente in ciento quarenta en esta forma:

2 md. 22 cens Reglado pro el 6 por 100 de premio y que ha
132 " 12 " comprado y satisfecho su importe ci eincuento rs
147 uno. directamente enle deponsaire a rentas de este
panido un du pagonie de conerai vialisable a nevil-
261 dias ugula correspondiente y para que los buques del resguardo
io le pougan impedimeato alguno en su libre navegacion, a no
ser que se le aprehenda des cargando por la costa o a bordo de otro

buque parte o toda de la sal que conduce, en cargo se le tratara, como a defrandador de la venta, le doy la presente gina valedera por termino de mar, e intereinda por el eficial inspector de esta administracion sin cuyo requisito no sera de ningun valor.

Ibiza 20 de Juino de 1857.

(Signed) MANUEL VALAVINO,
Regestrado

Con mi intevencion—P. O.
(Sig'd.) LORENZO CALAN.

[No VII.] Exhibit M. M., No. 10. In Herman Fisher's deposition.
(Signed) Rr. STILLWELL,
U. S. Comm'r.

262 *No.* 33, *General. No.* 33, *Particular.*

Manufactory of salt of Ibiza, formentera of Santany.

Province of the Balear Islands, Dn. Emanuel Valaran y sellroas, chief director and administrator of the salt manufactories of the province of Balear Islands.

Measures of the fabric 8 mo., 82 en, 138, 18, 147 mrs.

I give permit to the Captain D'n Joseph S. Clark, of the American barque "Grapeshot," to take to Buenos Ayres the cargo of salt consisting of 147 measures, which he took from these depositories, entitled to 6 per cent. premium, and that he has bought and paid for the amount due on it at 30 r‘s cent to the repository of rents of this district, with a promissory note, payable at 30 days according to relative letter of order. And to the end that the custom-house officer may not hinder him in his course, unless he be caught unloading on the coast, or on board of some other ship, any part of the
263 salt which he is carrying, in which case he will be treated like
a smuggler. I give him this permit to last to the end of his voyage, being countersigned by the surveyor of this office, otherwise to be void.

IBIZA, 20*th of June*, 1857.

(Signed) MANUEL VALAVINO,
Register.

Countersigned. The Surveyor.
(Signed) LORENZO CALAN.

264 Barque Grapeshot and owners, to Edward Close.

To 60 lbs. spun yarn, @ 28 cts	$16	80
128 " 1½ in hemp rope @ 8 cts	23	08
233 " Manilla rope, @ 20 cts	46	60
200 " lanyard, @ 18 cts	36	00
180 " yards cotton canvass, @ 39	70	00
1 top-mast; 1 sowr; 1 top gallant stay; and one yeyal	150	00
1 hemp top-sail	225	00
1 cotton topsail	200	00

To 1 top gall't sail	$45 00
1 top galt. mast	18 00
2 bbls. flour, @ $11	22 00
2 hogs, @ $9 each	18 00
6 cans preserved meats, @ $3	18 00
100 feet lumber	40 00
	$928 60

Received payment.
(Signed) EDWARD CLOSE.
Rio de Janeiro, March 15th, 1858.

Exhibit 11, Q. Q.—No. 7.
Signed) R'R STILWELL,
U. S. Comm'er.

265 Barque Grapeshot, to Brown & Moore.

To 6 men, 1 day each 310	£3 00 00
Oak plank	2 04 00
3 pine boards	1 09 00
Use clamp screws	0 05 00
	£6 18 00

No. 11, Ex. P. P., No. 1.

Rec'd in full for Brown & Moore.
(Signed) WM. STIERN.
Isle Sal, Dec'r 14th, 1857.
(Signed) R'R STILWELL,
U. S. Comm'r.

Barque Grapeshot to John Enge.

To smith work	£6 10 6

Received in full.
(Signed) JOHN ENGRE.

Isle de Sal, Dec'r 10th, 1857.

No. XI.—Ex. P. P., No. 2.
(Signed) R'R STILWELL,
U. S. Com'r.

266 Barque "Grapeshot" and owners to Harrah & MacLennan, No. 108 Rua da Sande, Dr.

On hand, pine and parbora masts, spruce and pine spars and ship timber, of all descriptions; careful attention paid to all branches of the business. Block-making under our entire direction.

To 1 large plank, paroba timber, pr	90	000
2 oars, meas. 28 ft., @ 360	10	080
Hire of ten men warping in, @ 3	30	000
18 d. oakum, 5 500	99	000
815 vrs. Mina cotton, @ 400	326	000
4 bar. best tar, 21	84	000
5 " " pitch, 23	115	000
6 packets for tacks, @ 400	2	400
907 sheets yellow metal, weighing 6,281 lbs., 700	4396	700
1656 lbs. copper nails, 640	1059	840
1 stick parola for keel	150	000
5 planks, parola (graving pieces,) 85	425	000
15 pine boards, various uses, 2 500	37	500
3 hard wood boards, 12	36	000
6 m's oil, for (Galagala,) 1 400	8	400
267 6 alg. lime, (Galagala,) @ 500	3	000
7 lbs. sheet lead, @ 320	2	200
2 packets copper tacks, @ 1 800	3	600
50 lbs. putty, @ 160	8	000
100 " iron nails, (various,) @ 160	16	000
50 men heaving ship out, @ 3	150	000
9 men warping out, @ 3	27	000
	Rs.7,079	760

Hire of riggers.

1 foreman rigger, careening, 8 days, @ 8	64	000
Rigger-men, careening, making, 20 " @ 6	120	000
1 foreman rigger, not do " 10½ " @ 6	63	000
Rigger-men " " " 28 " *a* 4	112	000

Hire of carpenters.

Journeymen careening, making, 102 days, *a* 8	816	000
Blacks, do. " 45 " *a* 4 500	202	500
Journeymen not do. " 80 " *a* 5	400	000
Blacks " " 38 " *a* 3	114	000

Hire of careening tackle.

1 careening hulk, 16 days, *a* 12	192	000
2 large purchases for heaving out, 11 days, *a* 10 each	220	000
1 purchase used in steadying ship, 11 " *a* 6	66	000
4 large chain shrouds 17 " *a* 2 each	136	000

268 8 large bocks for ditto.....17 " *a* 2 " ..	272 000
4 rope lanyards...... ....17 " *a* 2 " ..	136 000
4 rope lashings for blocks....... 17 " *a* 1 " ..	68 000
12 chain do. do........... 17 " *a* 1 " ..	204 000
2 spars for shores to masts...... 17 " *a* 4 " ..	136 000
3 tackles used on board, with riggers, 17 " *a* 3 " ..	153 000
2 chain and 2 rope strops........ 17 " *a* 2 all....	34 000
2 planks, parola, cut up for steps and shores, wedges, &c., *a* 3..................	60 000
4 small spars cut up for shores to heels of masts, houses, &c., *a* 28......	112 000
	Rs.10,760 260

Account of caulking.

1 master caulker..................	150 000
White caulker, careening, making, 39 days, *a* 8......	312 000
Do. do. not careening, ...68 " *a* 5......	340 000
Black, do. " " 130 " *a* 4 500 ..	585 000
Do. do. not " " 58 " *a* 3......	174 000
Floating stages making ....60 " *a* 2......	120 000
8 pitch moss, *a* 2......................	16 000
1 " launch and kettle.........15 " *a* 4......	60 000
Hire of two launches.... ....18 " *a* 6......	108 000
1 pump................. 5 " *a* 4......	20 000
Administration of Hurrah & McLennan..............	420 000
	Rs.13,065 260

269 Received the above thirteen thousand sixty-five mill, two hundred and sixty reis, (13,065 260,) in full.

Rio de Janeiro, 15th April, 1858.

(Signed) HARRAH & McLENNAN.

No. 1.—Exhibit A, No. 1.

(Signed) R'R STILLWELL,
U. S. Commissioner.

Endorsed: 35. Harrah & McLennan, acc. Rs. 13,065 260.

270 *Evidence for claimant continued.*

DEC'R 13, 1859.

2°. Depositions taken in court, of Alfred Moulton, with doc'ts referred to, (see p. 283, 262,) and of A. F. Elliot, both on claimant's credit, at Rio, &c., excepted to by libellants as irrelevant to the issue, and read subject to s'd exceptions.

Register and inventory of barque.

(See pp. 289 to 317; 268 to 296.) Depositions of John Graham, W. S. Hanford, John Sims, taken at New York, and of N. W. Thaxter, at Boston, taken de bene esse, by Commissioner R. E. Stilwell, (N. Y.,) and L. Webster, (Boston,) respectively, excepted to by libellants as improperly authenticated, and tardily opened for inspection, and read subject to exceptions, Dec'r 12th, 13th, 1853.

(297) Admission as to testimony of Robt. Howes, absent.

(Pages 251 to 297, inclusive. See pp. 272 to 318, inclusive.)

271

272 U. S. District Court, east. district of Louisiana.

WALLERSTEIN, MASSET & Co.
vs. } No. 7,370.
BARQUE "GRAPESHOT."

Deposition of Alfred Moulton, for claimant, taken in court, and filed with doc'ts A, B, C, D, December 13th, 1859, all offered in evidence, excepted to by libellant as irrelevant.

IN COURT, *December* 13*th*, 1859.

Alfred Moulton, a witness for claimant, sworn, deposes: I am, and have been four or five years, a member of the firm of John O. Woodruff & Co., of this city.

(N. B. Libellant objects to this testimony on the ground of irrelevancy to the issue.)

273 Witness. Our firm paid the annexed bill of disbursements on acc. "Grapeshot," $996 07, and also the draft referred to in the annexed document, $833 97. The original draft is now on file in the 6th Dist. Court, in a suit instituted by Woodruff & Co. *vs.* George Law and Joseph S. Clark for the amount thereof.

Cross-examined.

We were instructed by Mr. Law to pay these disbursements, and to load the vessel for New York; also to turn Captain Clark out of the command of the vessel. We acted in consequence of these instructions, which we received after the arrival of the vessel here. The vessel did not come here consigned to us. Our suit on the draft *vs.* Law was in consequence of his being the owner of the vessel. Law's instructions authorized us to pay the disbursements. Messrs. P. A. Giraud & Co. held the draft which was protested for non-acceptance. We paid it on Captain Clark's declaration
274 that it was for disbursements at Rio for the vessel. We paid the draft also to avoid a seizure of the vessel by Mess. P. A. Giraud & Co. I think the "Grapeshot" arrived here between the 6th and 10th June, 1858—about the 9th, I think. I think that the crew were discharged immediately after we received the instructions. The crew were paid about the 15th June, I think, before we received the telegram from Law refusing to allow the disbursements. Our first dispatch was received about 13th. We retained the mate,

Comeges, on board as keeper of the vessel. Captain Clark, as soon as he heard what was going to be done with him, left the vessel. After his departure we could not find the log-book or crew-list on board; the mate looked for them at our desire, and reported that he could not find them. I have very little commercial intercourse with Rio; have had none for the last five or 6 years.

Direct resumed.

275 I know the commercial standing of Maxwell, Wright & Co., of Rio. (Libellants object to relevancy of question.) I have always understood their standing to be good; they do a very large business with the United States; they are connected with the coffee trade, I know; whether with the shipping interest or not I don't know. The draft and protest to which I have referred are hereto annexed as Document "B." I produce and annex a true copy of the disbursements already referred to, marked A, and of the telegrams, 2 in number, spoken of, marked "C" and "D."

(Signed) A. MOULTON.

(Signed) ROBT. LUSHER,
U. S. Com'n'r.

276 *Document "A," annexed to and filed with deposition of Alfred Moulton, for claimant, December 13th,* 1858.

Statement of amounts paid by John O. Woodruff & Co., in conformity with instructions of George Law, for account bark "Grapeshot" and owner.

1858.					
June 15.	Paid J. S. Clark, master, 50 days' sight draft on Robert Holmes, favor Rostrom, Dutton & Co., protested for non-acceptance ·····	$833 47			
	Protest fees ··········	3 00			
			$836 47		
	Less 18 days' discount, at 6 per cent ·····················		2 50		
				833 97	
	Less D. Nugent, 2d mate, bal. wages···			29 26	
	D. Martinus, seaman, do. ···			10 40	
	John Welsh, do. do. ···			10 40	
	C. Wellman, do. do. ···			150 55	
	J. O. Jean, do. do. ···			143 70	
	Geo. Cook, do. do. ···			165 40	
	P. Myers, do. do. ···			111 55	
					1,455 23
16.	Tell'g. despatches, $2 80, $2 50··			5 30	
	N. E. Price, ball. wages ···· ····			81 47	
					86 79

June 17.	Levee dues	69 00	
277	Telleg. dispatches, $2 40, $2 40, $2 40	7 20	
			76 20
18.	G. M. Comeggs, 1 officer, bal. wages	91 47	
	Pilotage from sea	38 50	
	Tel. dispatch	9 14	
			139 11
July 7.	R. L. Robertson, survey, or for survey		10 00
22.	G. M. Comeggs, 1st officer, wages to date, say 1 month and 6 days, at $50 00 per month		60 00
24.	U. S. marshal, per copy of inventory		1 50
27.	Custom-house for copy of 6 documents sent Geo. Law, at 20 cts. each		1 20
			1,830 03

Document "B," annexed to and filed with deposition of Alfred Moulton, for claimant, December 13th, 1859.

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known that on
278 this day of June, in the year one thousand eight hundred
and fifty-eight, at the request of Mess. P. A. Giraud & Co., holder of the original draft, whereof a true copy is on the reverse hereof, I, Theodore Guyol, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said draft to the drawee and demanded acceptance thereof, and was answered that he would not accept the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the maker or drawer of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of acceptance of the said draft.

Thus done and protested in the presence of W. G. Lathan and Paul Abat, witnesses.

279 In testimony whereof, I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] ("Signed") THEO. GUYOL, *Notary Public.*

Ex. pr. $833 4-100.

RIO DE JANEIRO, *April 15th*, 1858.

At twenty days sight pay this (2d and 3d) to the order of Mess. Rostrom, Dutton & Co., the sum of eight hundred and thirty-three dollars 47-100, American currency, for value received, in necessary disbursements of barque "Grapeshot," beyond amount of bottomry bond executed on same, which place to account as advised by me against copper to your consignment for Morning Star.

("Signed") JOSEPH S. CLARK.

To Robert Howes, Esqr., New Orleans.

280 Pay to order of Mess. P. A. Giraud & Co., Rio de Janeiro, 15 April, 1858.

("Signed") ROSTROM, DUTTON & CO.

Draft annexed to and filed with protest.

No. 202. R. D. & Co. Ex. for $832 47-100.

Rio de Janeiro, *April* 15, 1858.

At twenty days sight pay this first of exchange, (2d and 3d not paid) to the order of Messrs. Rostrom, Dutton & Co., the sum of eight hundred and thirty-three dollars 47-100, Am'r currency, for value received in necessary disbursements, barque Grapeshot, beyond amount of bottomry bond executed on same, which place to account, as advised by me, against copper to your consignment pr. "Morning Star."

("Signed") JOSEPH S. CLARK.

To Robert Howe, Esq., New Orleans.

Rostrom, Dutton & Co. Protested for non-acceptance. New Orleans, June 19th, 1858.

Pay to the order of Messrs. P. A. Giraud & Co. Rio de Janeiro, 15th April, 1858.

("Signed") ROSTROM, DUTTON & CO.

281 New Orleans, 15*th June*, 1858.

Received payment of within draft from Messrs. J. O. Woodruff & Co.

(Signed) A. GRANIER,
ppr. G. A. GIRAUD & CO.

Document C.—Telegram annexed to and filed with deposition of Alfred Moulton, for claimant, December 13*th*, 1860.

June 12, 1858.

By telegram from New York, 12, 1858.

To John O. Woodruff & Co:

Called on captain Grapeshot; get amount freights bottomry bond to New Orleans, amounts due crew and other expenses, except captain's wages. Collect her freight money, and pay crew and expenses. Load vessel in freight for New York. Answer, George Law. Correct.

WOODRUFF & CO.

282 *Document B.—Telegram annexed to and filed with deposition of Alfred Moulton, for claimants, December 13th,* 1859.

Dated New York, 18th June, 1858. Received New Orleans, 18th, 1858, at 3 o'clock 40 minutes p. m.

To JOHN O. WOODRUFF & Co:

Private. Satisfied of fraud. I contest bottomry. When decided barque may be sold. Obtain all facts. Captain will disclose and get bottomry and bills and accounts. Employ Mr. Clack, or if absent, some good lawyer, immediately to contest thoroughly. Captain not to know at present. You cannot forget her till decision. Do not pay crew or expenses now. Interrogate crew. Discharge Captain when bills are got. Full power and papers by mail. Keep former messages private. All superseded by this.

(Signed) GEORGE LAW.

283 U. S. District Court, east. district of Louisiana.

Deposition of A. F. Elliot for claimant, taken in court December 13th, 1858.

WALLERSTEIN, MASSET & Co.
vs. } No. 7,370.
BARQUE "GRAPESHOT."

A. F. Elliot for claimant sworn, deposes:

I have been a merchant in this city for 12 or 13 years; most of the time in business relations with Rio. For 8 or 10 years have been the agents here of Maxwell, Wright & Co., of Rio. During the winter and spring of 1858 the commercial standing and reputation of that firm were as good as that of any house in the world; at the head in Brazil. Their business was chiefly American. Coffee shipments, dispatching and receiving American vessels, &c. The house
284 has been there 40 odd years or more.

No cross-examination.

Signature omitted accidentally.

("Signed") ROBT. M. LUSHER,
U. S. Com'r.

U. S. Dist. Court, east. district of Louisiana.

Copy of Register returned by U. S. Marshal and filed August 30th, 1858.
Filed and offered in evidence by claimants December 13th, 1859.

WALLERSTEIN, MASSET & Co.
vs. } No. 7,370.
BARQUE "GRAPESHOT."

Five hundred and thirty-six.—No. 536.

In pursuance of an act of Congress of the United States of America entitled "An act concerning the registering and recording of ships

285 or vessels," George Law, of the city, county, and State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the "Grapeshot," of New York, whereof Richard Hepburn is at present master, and a citizen of the United States, and that the said ship or vessel was built at Cumberland, State of Maine, in the year eighteen hundred and fifty-three, as per register, No. 535, issued at this day, now cancelled, property changed in part. And said register having notified that the said ship or vessel has one deck and three masts, and that her length is one hundred twenty feet ten inches, her depth eleven feet eleven ½ inches, her breath twenty six feet three inches, and that she measures three hundred and forty-five 2-95 tons; that she is a bark, has a round stern and a figure head; and the said George Law, having agreed to the description and admeasurement above specified, and sufficient security having been given, according to said act, the said bark
286 has been duly registered at the port of New York.

Given under our hands and seals, at the port of New York, this 25th day of August, in the year one thousand eight hundred and fifty-four.

[SEAL.] (Signed) F. RIGGER, *Register.*
[SEAL.] ("Signed") C. S. FRANKLIN,
D'y Naval Officer.

CONSULATE OF THE UNITED STATES AT RIO DE JANEIRO.

I, the undersigned consul of the United States at Rio de Janeiro, do hereby certify that Joseph S. Clark, master of the barque "Grapeshot," of New York, described in the within register, has this day hypothecated the said vessel "Grapeshot" unto Wallerstein, Masset & Co., of this city, merchants, in the penal sum of nineteen thousand five hundred and thirty four 90-100 dollars.

Given under my hand and seal of office this 15th day of April, 1858.

(Signed) ROBERT G. SCOTT, JR.

287 DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, 9*th August*, 1858.

I, J. W. Hinks, d'y collector of the customs for the district and port aforesaid, do hereby certify the within to be a true and correct copy taken from the original on file in this office.

Given under my hand and seal of office, at New Orleans, the day, month and year above written.

(Signed) J. W. HINKS,
D'y Collector.

U. S. District Court, east. dist. of Louisiana.

WALLERSTEIN, MASSET & CO.
vs.
BARQUE "GRAPESHOT."
No. 7,370.

288 *Inventory of the barque "Grapeshot," offerred and filed in evidence by claimant, December 13th,* 1859.

20 Minnie rifles and muskets.
Lot of shot and powder.
3 matresses.
2 mosquito bars.
1 medecine chest.
4 flags.
1 binnacle with canvas.
1 bowl and pitcher.
1 can of flour.
1 sac of rice.
1 table.
4 cain chairs.
1 tumbler rack.
Set of crockery and glass-ware.
2 lamps.
1 speaking-trumpet.
3 boats.
2 sets of sails.
2 cannons.
8 water-bucketts.
2 bundles of new rope.
Lot of old rope.
Set of spars.
11 water casks.
2 meat do.
2 anchors and chains.
289 1 hedge.
Small quantity of paint.
Cooking stove and apparatus.
2 blls. of flour.
4 do. biscuit.

(Signed) GEO. P. CHILDRESS,
D'y U. S. M.
JULY 12, 1858.

U. S. Dis't Court, east district of Louisiana.

Deposition of John Graham, taken before U. S. Com'r R'r Stilwell, New York, for claimant. Filed 12*th December* 1859.

WALLERSTEIN, MASSET & CO.
vs.
BARQUE "GRAPESHOT." } No. 7,370.

☞ Offered in evidence by claimant December 13th, 1859. Libellants' exceptions reserved. Taken de bene esse.

290 John Graham did thereupon depose, testify, and say as follows, viz:

I reside in Stanford, in the State of Connecticut, and more than one hundred miles from New Orleans, the place of trial of this cause. I am by profession a mariner, commander, and merchant, and the owner of many ships. I know George Law, the respondent in this case; he resides in the city of New York; and have known him for fifteen years peasonally. In 1849 he became the owner of several steamships, among which may be named the steamers "Isthmus," "Antilope," "Columbus," and "Republic." They formed a line between Panama and San Francisco. I was in the port of Rio Janeiro in 1850, where I had extensive commercial business relations with the house of Maxwell, Wright & Co., and Birchhead & Co.

In February or March, of that year, the steamers "Columbus" and "Republic" put into Rio Janeiro on their way to the Pacific ocean, for the purpose of repairs and supplies. They were consigned to
the house of Maxwell, Wright & Co., the largest commercial
291 house of that country.

The ships were repaired and supplied by that firm, who were Mr. Law's agents at that place. I know the facts, because I had an interest, and was part owner of one of the ships. Mr. George Law was as well known as a man of large wealth in Rio Janeiro as he was in New York, and his credit was undoubted. It was well known a Rio Janeiro that Maxwell, Wright & Co. were the only agents of George Law's ships at that place, and that they disbursed the ships and took the captains' drafts upon George Law, advancing any amount required for the use of the ships, charging only the ordinary commission of five per cent. on the disbursements. I correspond with Maxwell, Wright & Co., and I know that Mr. Law's credit stands as well with them now as it did in 1850, and that they would have advanced any amount that was necessary to repair any of his ships, taking the captain's draft upon him, as aforesaid. On this point I have no doubt whatever.

(Signed) JOHN GRAHAM.

292 Sworn to and subscribed before me this 19th October, 1859.

(Signed) R'R STILWELL,
U. S. Commissioner.

Clerk's certificate, annexed to and filed with deposition of John Graham, Dec'r 18th, 1859.

United States of America, *Southern District of New York, ss*:

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R'r Stilwell, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States Commissioner, duly appointed by 293 the Circuit Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and forty nine, and of the independence of the United States the eighty-fourth.

[SEAL.]

(Signed) KENNETH G. WHITE, *Clerk*.

U. S. Dis't Court, east district of Louisiana.

Wallerstein, Masset & Co.
vs.
Barque "Grapeshot." } No. 7,370.

Deposition of W. S. Handford, for claimant, taken de bene 294 esse, before R'r Stilwell, U. S. Commissioner, New York. Opened by order of court. Filed 12th December, 1859.

Offered in evidence by claimant 13th December, 1859.

Libellant's exceptions reserved.

Winfield S. Hanford did thereupon, depose, testify, and say as follows, viz:

I reside in the city of New York; I am a merchant in said city, and am one of the firm of W. A. Sale, jr., & Co. In February, 1856, W. A. Sale paid expense of putting yellow metal on ship "Western Continent" for her then owners, Fisher & Co. The work was done at New York. W. A. Sale, jr., bought metal of Goodhame & Co., of city. The annexed bill, marked Exhibit A, rendred by Goodhame & Co., specifies the number of sheets, weight, and cost of said yellow metal correctly.

(Signed) WINFIELD S. HANDFORD.

Sworn to and subscribed before me this 17th March, 1859.

(Signed) R'R STILWELL, *U. S. Comm'r*.

295 *Exhibit "A."*

NEW YORK, *February 5th*, 1856.

W. A. Sale, jr., for ship Western Continent and owners, bought of Goodhue, & Co. G. & Co.:

19, 1 case,	86 sheets,	22 onz.,	N. metal,	5.0, 14 — 574,		
21, 1 “	86 “	“	“	5.0, 12 — 512,		
25, 1 “	86 “	“	“	5.0, 12 — 272,		
26, 1 “	86 “	“	“	5-0, 6 — 566,		
29, 1 “	86 “	“	“	5.0, 5 — 565,		
31, 1 “	86 “	“	“	5.0, 8 — 568,		
32 1 “	86 “	“	“	5.0, 11 — 571,	183.26	
34, 1 “	86 “	“	“	5.0, 3 — 563,	4,551 lbs. 26	
36, 1 “	80 “	24 onz.,	“	5.0, 4 — 564,		
37, 1 “	80 “	“	“	5.0, 10 — 570,		
48, 1 “	80 “	“	“	5.0, 6 — 566,		
49, 1 “	80 “	“	“	5.0, 8 — 568,		
50, 1 “	80 “	“	“	5.0, 13 — 573,		
53, 1 “	80 “	“	“	5.0, 12 — 572,		
54, 1 “	80 “	“	“	5.0, 9 — 569,		
55, 1 “	80 “	“	“	5.0, 10 — 570,	1,332 24	
56, 1 “	80 “	“	“	5.0, 12 — 572,	5,124 26	
59, 1 “	75 “	26	“	5.0, 0 — 560,		
60, 1 “	75 “	“	“	5.0, 4 — 564,	7—	
63, 1 “	75 “	“	“	5.0. 0 — 560,		
65, 1 “	75 “	“	“	5.0, 16 — 576,		
66, 1 “	75 “	“	“	5.0, 4 — 564,		
68, 1 “	75 “	“	“	5.0, 6 — 566,		
69, 1 “	75 “	“	“	5.0, 13 — 573,		
71, 1 “	75 “	“	“	5.0, 23 — 583,	4,546 26	1,181 96
74, 1 “	70 “	28	“	5.0, 8 — 568,		
78, 1 “	70 “	“	“	5.0, 4 — 574,		
80, 1 “	70 “	“	“	5.0, 7 — 577,	1,719 26	446 94
					$4,144 40	
Less 1 per cent					41 44	
					4,102 96	
Less 5 per cent					205 18	
					$3,897 81	
Cartage					5 75	
					$3,908 56	

Exhibit "A."
(Signed) R. STILWELL, *U. S. Com'r.*

296 *Clerk's certificate annexed to and filed with deposition of S. W. Hanford, for claimant.*

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of Mr. Stilwell, whose name is subscribed to the annexed certificate, and that the signature is in his proper handwriting; and I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and
fixed the seal of said Circuit Court this 24th day of October,
297 in the year of our Lord one thousand eight hundred and fifty-
nine, and of the independence of the U. S. 84th.

[SEAL.] ("Signed") KENNETH G. WHITE.

U. S. District Court, east. district of Louisiana.

WALLERSTEIN, MASSET & Co.
vs.
BARQUE "GRAPESHOT." } No. 7,370.

Deposition of John Sims, for claimant, taken de bene esse before U. S. Commissioner Rr. Stilwell, New York.

Opened by order of court, and filed the 12th day of December, 1859.

Offered in evidence by claimants December 13th, 1859. Libellants' exceptions reserved.

John Sims did thereupon depose, testify, and say as follows: I
was second mate of the barque "Morning Star," of New Orleans,
298 of which Edward Close was captain. I am a native and subject
of England, and at present am stopping at No. 7, James Slip,
in this city. Captain Close was the master and owner of the barque, I believe. I shipped at Liverpool, and went in the barque to Rio Janeiro with a cargo of coal; arrived at Rio Janeiro in the first part of August, 1857; we layed there eight months, and left there some time in April, 1858; sailed for New Orleans in the bark with copper or metal as ballast, which had been stripped from the barque Grapeshot; there was upwards of forty bundles of it, ten sheets in a bundle, and some scraps. I do not know of its being weighed; it was smuggled from the "Grapeshot" at night in boats; it came off in three boats loads. A considerable of the Grapeshot's copper was not brought off. I do not know that any of the copper from the ship "Western Continent" came on board. This copper from the "Grapeshot" was all the Morning Star had on board. I do not know why the captain did not procure freight, but I suspected the
reason why. Before he left Rio he swapped one of his boats,
299 an old one, with Captain Clark of the Grapeshot, for a good
large boat, capable of holding several persons. The bark got
on fire when we were seven days out from Rio. It broke out in the hold of the vessel among the sails. The captain refused permission to myself and others of the crew to go down and put it out. The fire was discovered at ten minutes past four in the morning. The captain refused to have the main hatch, which had a tarpaulin on, opened. The day previously he had ordered the fore hatches to be battened down. On discovering smoke from the hold, he ordered

the boats to be put overboard, and occupied a good while in so doing, during which time the fire could have been readily put out if he had let the crew go down, as there was no cargo combustable of any sort. We could see the land in the morning off Cape Frio. We returned to Rio in the boat got of Captain Clark and another boat. There were thirteen of us, and it took forty-eight hours to get back.

The afternoon before the fire the captain had a cask of water,
300 a barrel of pork got up from below, and all put in the galley,
except the water, which was put on deck. The forehatch was caulked and battened down, but our after-hatch or scuttle was not battened down, but was open.

This scuttle opened abaft the cabin down into the hold. All the crew on board were satisfied, from all the circumstances, that she was set on fire by the captain; we had no doubt of it. I do not know of any beef being sold by Captain Close to Captain Clark, of the Grapeshot; Captain Close had none to sell. He let Captain Clark have two pigs; a cotton topgallant sail, new but unfinished, and a new hemp topsail. Having looked at a copy of the bill hereto, marked No. 1, Exhibit Q Q, No. 7, dated Rio Janiero, March 15th, 1858, amounting to $928 60-100, against the barque "Grapeshot" and owners, and receipted by Captain Close, I have to say that I do not consider the same as correct. Being second mate of said vessel
from the time she left Liverpool until she was burnt, I had
301 knowledge of the things on board of her. The two pigs
were small, and were worth perhaps $2 50 each. There were about six cans preserved meats; they were small, but not worth $18. There were about thirty pieces of old boards, which we had used on board our vessel; there could not have been more than 300 feet board-measure in all; they were split and worn, and were not worth more than $10 at the outside. I don't believe the charge for two barrels of flour is correct; we had none to spare. Excepting the unfinished topgallant sail and hemp topsail before mentioned, the Morning Star did not furnish the Grapeshot with any sails. There was one bolt of cotton canvass and a part of another, and some pieces, not amounting, however, to a hundred and eighty yards; and thirty-nine cents per yard is too much for it. The charges for a topgallant sail, a topgallant mast, a topmast, and lower and topgallant stay, and one royal, I do not consider correct. The Morning Star had no such spar or sails to furnish. I cannot answer as to hemp rope, spun
yarn, Manilla, and lanyard. There were small quantities fur-
302 nished, but the quantity and charge seemed to me to be above
what could have been supplied from said vessel. My occupation is that of a mariner. I expect to proceed on a voyage to sea next Monday. I regard my present domicil and residence as of Plymouth, England. I cannot conceive why Captain Close stayed eight months at Rio, for he was offered freight at seventy-five cents per bag for coffee to New Orleans, and could have got other freight for this vessel. He ran his ship in debt nine thousand millreas, and without any repairs being done to her. Captain Close claimed the copper on board the "Morning Star" as his own; but I afterwards heard that

Captain Clark claimed it; I thought there must be some intrigue be-
tween them about it. I heard Captain Close say the "Morning
Star" was insured when she was lost. Since I have been in attend-
ance on the court as a witness in this cause I met Captain Close in
in New York. He owes me some wages, and he enquired particu-
larly if I had seen the insurance officers in New Orleans the
303 second time, (as I had seen them once while there;) and he
said if I would not go near them again he would pay me my
wages. He has not paid them.

(Signed) JOHN SIMS.

Subscribed and sworn to before me this 25th November, 1858.

(Signed) R. R. STILLWELL,
U. S. Com'r.

304 Bark Grapeshot and owners to Edward Close.

To 60 lbs. spun yarn, @ 28 cts	$16 80
128 lbs., 1½ in. hemp rope, @ 18 cts	23 08
233 lbs., Manilla, @ 20 cts	46 60
200 lbs., lanyard, @ 18 cts	36 00
180 yards cotton canvass, @ 39 cts	70 20
1 topmast, 1 lower, 1 topgall't stay, and royal	150 00
1 hemp topsail, 1 topgall't stay	225 00
1 cotton topsail, 1 topgall't stay	200 00
1 topgall't sail, 1 topgall't stay	4 50
1 topgall't mast	18 00
2 bbls. flour, @ $11	22 00
2 hogs, at $9 each	18 00
6 cans preserved meats, at $3	18 00
1,000 feet lumber	60 00
	$928 60

Rec'd payment.

(Signed) EDWARD CLOSE.

RIO DE JANIERO, *March* 15*th*, 1858.

Endorsed: No. XI., Exhibit Q Q, No. 7. In John Sims' deposition.

305 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R'r Stillwell, whose name is subscribed to the annexed certificate, and that the [the] signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a U. S. commissioner, duly appointed by the Circuit Court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court this 24th day of October, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of U. S. of America the 84th.

(Signed) KENNETH G. WHITE,
Clerk.

306 U. S. District Court, east. district of Louisiana.

Deposition de bene esse of Adam W. Thaxter for claimant, taken by U. S. Commissioner Sidney Webster, Boston, February 15*th*, 1859.

WALLERSTEIN, MASSETT & CO.
vs. } No. 7,370.
BARQUE "GRAPESHOT."

Opened by order of court, and filed December 12th, 1859. Offered in [in] evidence by claimant December 13th, 1859. Libellant's exception reserved.

Interrogatories to be propounded to A. W. Thaxter, witness produced, cautioned, sworn, and examined on the part of George Law, in a certain cause now pending in the District Court of the United States for the eastern district of Louisiana, in which Wallerstein, Massett & Co. are libellants against the barque "Grapeshot," of New York, her tackle, apparel, &c., and certain 307 freights, and said George Law is respondent; said witness residing at Boston, in the State of Massachusetts, more than one hundred miles distance from the place of trial of said cause, New Orleans, and therefore to be examined de bene esse, under the act of Congress in such case made and provided, before Honorable Sidney Webster, United States commissioner, duly appointed by the Circuit Court of the United States for the district of Massachusetts, in the first circuit.

I°. What is your name, age, occupation, and where is your residence?

Adam Wallace Thaxter, to the first interrogatory, answers: My name is Adam Wallace Thaxter; my age, fifty-two years; my occupation, a merchant; and my residence Boston, in county of Suffolk, and State of Massachusetts.

II. Do you know anything respecting the ship "Western Continent?" If so, state it, and say if you know what was her tonnage, 308 when was she built and where, who owned and commanded her in December, 1857, and up to May, 1858. Had said vessel yellow or muntz metal on her during that time? If so, state when it was last put on, and where, and how many pounds and how many pieces, as nearly as you can, and how much it cost per pound, and all you know respecting it.

Adam W. Thaxter, to the 2nd interrogatory, answers: I do know something of the ship "Western Continent." I am member of the house of Bates & Co., which has owned said ship for about three years. Her tonnage is 1,272 3-95 tons. She was built in Pembroke, in the State of Maine, in year (1854) eighteen hundred and fifty-four. She was owned by my partner, John D. Bates, and myself, (making firm of Bates & Co.,) from December, 1857, to May, 1858, and commanded during that time, and now, by Captain Henry Reed; am unable to state, of my knowledge, whether the yellow metal she had on her was of muntz manufacture, or some other manufacture, such as the Revere or Taunton Company. She was not sheathed with copper. I think the metal she had on in Rio was put on her 309 in New York, in the year 1855; cannot state about pounds or pieces or costs, it being done before Bates & Co. owned the ship.

III°. Did or did not said ship go into Rio in distress in the month of December, 1857, or during that year, or in January, 1858, and was she not repaired there, and the old metal on her stripped off and other copper or metal put on in its place?

Adam W. Thaxter, to the third interrogatory, answers: The said ship did put into Rio in distress in December, 1857; was there rerepaired, and the old yellow metal on her stripped off and other copper or metal put on her in its place.

IV°. Do you know the aggregate costs of her repairs at Rio? If so, please state them.

Adam W. Thaxter, to the 4th interrogatory, answers: That 310 the aggregate cost of her repairs at Rio was about twenty-four thousand millreas, (24,000.)

V°. Do you know who did said repairs? If so, please state fully.

Adam W. Thaxter, to the 5th interrogatory, answers: The said repairs were made by Harrah & McLennan.

VI°. Have you or not the original or a copy of Harrah & McLennan's contract for making said repairs, or of their account or bill amounting to Rs.2422.500, or some other sum and the other bills and accounts at Rio, against said ship in 1857 and 1858. If yea, please annex the originals or copies thereof hereto; and if not, please state where they may be obtained in the United States.

Adam W. Thaxter, to the 6th interrogatory, answers: That his house (Bates & Co.) has copies of Harrah & McLennan's contract for making said repairs, and of the account or bills of said Harrah 311 & McLennan, and all other bills and accounts at Rio, against said ship in 1857 and 1858, certified by the signature and seal of the consul of the United States at said port of Rio, and that the papers herewith marked A, B, C, D, are copies of said contract and bills for said repairs by Harrah and McLennan.

VII°. What was done with the old metal and nails stripped from the said ship? If sold, so state; and who sold, and who purchased the the same; and state if the old metal was sold by the pound, or by the piece, and the price it brought per pound or piece; and how many pounds or pieces of old metal there was, and how many pounds of nails; and if you have any account of sales, please annex the original or a copy thereof to this deposition.

Adam W. Thaxter, to the 7th interrogatory, answers: The old metal and nails stripped from said ship, were sold at public auction to persons to him unknown, and that all the knowledge he has
312 respecting the same, and all the further answer he can give to this seventh interrogatory, is to be found in an account of sales of metal and nails rendered Bates & Co. by Charles Coleman & Co., a copy of which is hereto annexed, marked E.

VIII°. Do you know anything of advantage or material to either of the parties in said cause?

FEB'Y 10th, 1859.

(Signed) GEORGE LAW,
Respondent.

Adam W. Thaxter, to the 8th interrogatory, answers: That he does not know anything further to the advantage or material to either of the parties in this cause.

(Signed) A. W. THAXTER.

313 *Exhibit A.—Annexed to and filed with deposition of A W. Thaxter, for claimant. December* 13*th*, 1859.

RIO DE JANEIRO, 16*th January*, 1858.

Messrs COLEMAN & Co.

GENTLEMEN: We agree to effect the repairs of the ship, "Western Continent," according to your terms for the sum of nineteen coutas five hundred millreis.

Time required for the same work, 16 days.

N. B.—We agree to sign the papers customary on such contracts.

(Signed) HARRAH & McLENNAN.

Messrs COLEMAN & Co., *Rio de Janeiro.*

314 "*Exhibit B.*"*—Annexed to and filed with deposition of A. W. Thaxter, for claimant. December* 13*th*, 1859.

We, the undersigned, declare that we oblige ourselves to execute the repairs (as above stated, and in accordance with the report of survey) of the ship "Western Continent" for the sum of nineteen thousand five hundred milreis in the space of 16 working days. Demurrage for excess of time at the rate of Rs.500.000 per diem. The work to be done to the satisfaction of the captain.

RIO DE JANEIRO 16*th Jan'y*, 1858.

(Signed) HARRAH & McLENNAN.

N. B.—The ship to be moved by the captain, and the time to commence thereafter; no holidays or Sundays to be included.

315 *Exhibit "C."—Annexed to and filed with deposition of A. W. Thaxter for claimant. October 13th,* 1859.

RIO DE JANEIRO, 22*d March*, 1858.

Ship "Western Continent" and owners, Dr.,
To Harrah & MacLennan. No. 108, Rua de Saude:

To heaving out, caulking and coopering the ship, as per conditions of contract....	Rs.19.500 000
To difference of weights of copper stipulated for in the contract, and copper actually put on the ship, no other being obtainable in the market, 2.350 lbs. @ 750....	1.762 500
To repairing 2 boats, putting in two planks in garboard streaks, 22 feet false keel, scarfing rudder, repairing rudder, trunk, &c., putting in two new quarter deck planks..............................	1.850 000
	Rs.23.112 500

Received the above amount,
(Signed) HARRAH & MAC LENNAN.
(Signed) HENRY REED.

316 *Exhibit "D."—Annexed to and filed with deposition of A. W. Thaxter, for complainant. December 15th,* 1859.

RIO DE JANEIRO, 7*th April*, 1858.

Ship "Western Continent" and owners, Dr.,
To Harrah & MacLennan. No. 108, Rua de Suade:

To 8 rough pine spars for staging in discharging cargo, averging 35 f. x 6½ in. each, @ 25......	200 000
To 1 rough pine spar 42 ft. x 8½ in......	50 000
To 1 new quarter boat 26 ft. long, copper fastened, complete......	450 000
To 2 new iron dants for ditto, @ 90............	180 000
To 4 new double blocks for ditto, @ 7.500.........	30 000
	Rs.910 000

Received the above am't,
(Signed) HARRAH & MAC LENNAN.
(Signed) HENRY BEED.

317 *Exhibit "E."—Annexed to and filed with deposition of A. W. Thaxter, for claimant. Filed December* 13*th*, 1859.

Account sales of copper, &c., landed from ship "Western Continent," and sold for account of whom it may concern by order of Captain Henry Reed:

2,936 ys. copper, at 750 rs		2202 000
10,624 ys. copper, @ 16 cts., 1.669984, @ 1900		3229 700
654 ys. nails, 16 cts. 104.64 @ 1900		198 820
6 bales oakum, 300 3840 c. an		36 000
4 bbls. pitch, @ 16 000		64 000
		5730 ·520
Charges:		
Duty on Rs. 3.528, 520	1058.550	
Conferring, dispatching and petties	50 000	
Guarantee 2½ per cent	143 264	
Commission 5 per cent	286 526	1538 340
		Rs.4192 180

E. & O. E.

Rio de Janeiro, 12*th April*, 1858.

(Signed) CHARLES COLEMAN, & Co.

318 U. S. Dist. Court, east. district of Louisiana.

Wallerstein, Masset & Co.
vs.
Barque Grapeshot.
No. 7,370.

Admission in court as to testimony of Rob't Howes, offered in evidence by claimant and filed December 13th, 1839.

It is admitted that Robert Howes, of the city of New Orleans, the person mentioned in the draft produced by Alfred Moulton, would, if present, swear that under instructions from Joseph F. Clark, captain of the barque "Grapeshot," he did insure in the Union Insurance office in this city, to the extent of $2,500 and upwards, certain copper or yellow metal shipped on board the barque "Morning Star," at Rio, in April, 1858, by Clarke, and for account of said Clark.

(Signed WM. BULLITT, *Dy. Ck.*

New Orleans, *Dec'r.* 13*th*, 1859.
Attest: In court.

319 *Evidence for claimant continued.*

Dec. 13, 1859.

3°. Consular returns (copies of) to State Department, Washington city, showing—

1°. Arrivals at, and departures from, Constantinople of Amer. vessels, quarter to Mar. 31, '57, and arrivals at, and departures from, Constantinople of Amer. vessels, quarter to June 30, '57.

2°. Arrivals at, and departures from, Malaga of Amer. vessels, quarter to Mar. 31, '57, and arrivals at, and departures from, Malaga of Amer. vessels, quarter to June 30, '57.

3°. Approx. statement of exports to the U. S. from Malaga, 2d to 30 Sept. 1857.

4. Arrivals and departures, 1857.

5°. Arrival and departures, Malta, 31 Dec., '57.

6°. Arrival and departures, Rio Janeiro, to 30 Sept., '57.

7°. Arrival and departures, Rio Janeiro, to 31 Dec., '57.

8°. Arrival and departures, Rio Janeiro, to 31 Mar., 1858.

9. Arrival and departures, Rio Janeiro, to 30 June, 1858.

10. Navigation and commerce of the U. S. at Rio de Janeiro, for quarter end'g 30 June, 1858, all excepted to by libellants, as irrelevant to the issue, and admitted subject to s'd exceptions.

379 *Navigation and Commerce of the United States at the port of Rio Janeiro during the quarter ending the 30th of June*, 1858.

[Made up from consular returns.—Filed Dec. 13th, 1859.]

Vessels.				Cargoes.					
Arrived.		Cleared.		Inward.			Outward.		
No. of vessels.	Where from.	No. of vessels.	Where bound.		Description.	Value.		Description.	Value.
15	Baltimore	15	New York	15	Flour and sundries	$456,636	13	44,441 bags coffee	$666,655
14	Richmond, Va			14	do do	$546,392 00			
7	New Orleans.	13	New Orleans.	6	do do	$230,952 00	13	62,980 do do	$944,700
4	New York.	17	Baltimore	4	do do	$115,000 00			
4	Philadelphia			4	do do	$130,600 00	15	50,917 do do	$783,755
3	Boston	10	Philadelphia	2	do	$30,000 00	10	33,326 do do	$504,390
3	Pensacola	1	Hampton Roads	3	Lumber	$31,000 00			
2	Charleston, So. Ca			2	do and sundries	$15,000 00	1	4,563 do do	$68,445
1	Darien, Georgia	1	Richmond, Va	1	ditto	$7,500 00	1	3,800 do do	$37,000
1	Mobile	3	S'n Francisco, Cal	1	ditto	$8,000 00			
1	Wilmington			1	ditto	$7,000 00			
1	Whaling	1	Whaling						
16	Foreign ports	5	Foreign ports						
72						$1,568,080 00			$3,004,945

Classes of vessels entered: 46 barks, 2 ships, 11 brigs, 2 schooners, 1 ketch.
Classes of vessels cleared: 36 barks, 16 brigs, 11 ships, 2 schooners, 1 ketch.
Aggregate tonnage entered, 27,643.

380

381 UNITED STATES OF AMERICA, *Department of State:*

To all to whom these presents shall come, greeting:

I certify that the paper hereunto annexed is a true copy of the original on file in this department.

In testimony whereof, I Lewis Cass, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 23d day of August, A. D. 1858, and of the independence of the United States of America the eighty-third.

[SEAL.] (Signed) LEWIS CASS.

382 U. S. District Court, eastern district of Louisiana.

I, N. R. Jennings, clerk of the said court, hereby certify that the foregoing 344 pages manuscript, forming "volume second," do, together with the 222 pages heretofore by me certified May 25th, 1860, contain and form a true, correct, and complete transcript of the original record of said court in the case in admiralty of Wallerstein, Masset & Co., of Rio de Janerio, lib'ts, *versus* The Barque "Grapeshot," and the proceeds and freight thereof, No. 7,370, of the docket of said court.

In testimony whereof, I hereto set my hand and seal, at New Orleans, this 26th day of May, A. D. 1860, and 84th year of American independence.

N. K. JENNINGS, *Clerk.*
By ROB'T M. LUSHER, *Dep'y Clerk.*

383 United States Circuit Court, 5th circuit and district of La.

I, Charles Claiborne, clerk of said court, hereby certify that the foregoing 384 pages manuscript, together with 230 and 240 are additional pages manuscript, bound as vols. 1 and 3, separately from the present vol. 2, and by me certified on May 1st, 1867, contain and form a true and complete transcript of the record of appeal filed in this court May 26, 1860, in the case of Wallerstein, Masset & Co. *vs.* The Bark Grapeshot, proceeds, and freight, whereof George Law of New York is claimant, and bearing No. 3,301 of the docket of this court.

In faith whereof, I grant these presents under my signature and the seal of said court, at New Orleans, this 1st day of May, 1867, and the 91st year of the American independence.

[SEAL.] CH'S CLAIBORNE, *Clerk.*

384 I, Edward H. Durell, United States judge for the district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana,

was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 1 day of May, A. D. 1867.

E. H. DURELL, *Judge.*

385 N. B.—The references in the body of the transcript indicate the pages in the record on file, and the marginal references show the pages of the copy itself.

CH'S CLAIBORNE, *Clerk.*

END OF VOL. II.

O UNITED STATES OF AMERICA.

Circuit Court of the United States for the fifth circuit and district of Louisiana.

WALLERSTEIN, MASSET & Co., of Rio Janeiro, libellants on bottomry bond,
vs.
BARQUE "GRAPESHOT," PROCEEDS AND Freight, Geo. Law, of New York, claimant and appellant.
No. 3,301, Vol. III.

Proctors: Mess. Durant and Hornor, for libellants and appellees; J. Q. A. Fellows, Esq., for claimant and app'lt.

Appeal returnable to the Supreme Court of the United States, the first Monday of December, 1867.

1 *Proceedings in the United States Circuit Court for the fifth circuit and eastern district of Louisiana—April term,* 1860.

WALLERSTEIN, MASSET & Co.,
vs.
THE BARQUE "GRAPESHOT," &c.
No. 3,301.

Order Continuance.—From the minutes of June 12, 1860.

NEW ORLEANS, *Tuesday* 12*th June*, 1860.

Court met pursuant to adjournment, present Hon. J. A. Campbell, presiding judge; absent, Theo. H. McCaleb, district judge.

WALLERSTEIN, MASSET & Co.,
vs.
THE BARQUE "GRAPESHOT," &c,
No. 3,301.

This cause was called, F. J. Durant, esq., appearing for plffs., and F. H. Clark, for respondents; and thereupon the respondents' counsel moved for a continuance, and asked that the case adjourned until to-morrow to enable him to prepare an affidavit in support of his
2 said motion, and the case was adjourned until to-morrow.

Hearing and submission of application for continuance.—From the minutes of June 13*th*, 1860.

WALLERSTEIN, MASSET & Co.
vs.
BARQUE "GRAPESHOT."
No. 3,301.

This case came on to be heard on the application of the defendant for a continuance, based on affidavit filed, and was argued and submitted.

In the Circuit Court of the United States for the eastern district of Louisiana.

Appeal from the district court.—Brief of counsel of libellant.—Filed October 9th, 1860.

WALLERSTEIN, MASSET & CO.,
vs.
THE BARQUE "GRAPESHOT."

3 Brief of counsel for the libellants, Wallerstein, Masset & Co.

On the 13th of June, 1860, the counsel of George Law, claimant of the libelled property, made a motion, supported by affidavit, for the continuance of this cause, which was granted on condition that the case should be submitted on briefs on the 10th October, 1860, with any testimony that might arrive before that time, as the affidavit made by claimant's counsel for a continuance had set forth the fact that he had forwarded a commission to take testimony in Rio de Janeiro on the 9th April previous.

This case was commenced by the attachment of the barque "Grapeshot" on the 3rd July, 1858. The libel sets forth that the Grapeshot was in Rio in April, 1858, and was then in need of repairs, provisions, and other necessaries to enable her to proceed on her intended voyage from that port to New Orleans, and that the libellants loaned
the master, Joseph S. Clark, the owner not residing in Rio,
4 and having no funds or credit there, $9,767 45 on the bottomry, and hypothecation on the "Grapeshot," &c. (See vol. 1, page 2.)

That on the 13th April, 1858, the master executed a bond to secure this amount loaned, and 19½ per cent. maritime interest, payable at or before the expiration of twenty days after the arrival of the Grapeshot at New Orleans. (Rec., vol. I, p. 3.)

And that the vessel had arrived and the delay expired, but the bond remained unpaid, and concludes with the usual prayer for process and judgment. (See Rec., vol. 1, pp. 4 to 6.) The bond itself is found at vol. 1, pp. 7 to 10.

The consignees of the cargo paid $2,055,20-100 into the registry. (Rec., vol. 1, p. 15. See p. 17.)

The claimant, G. Law, refused to bond, (See Rec., p. 18. See p. 19.) and the barque was sold under order of court, and her nett proceeds amounting to $13,805 85, were deposited also in the registry. (See vol. 1, p. 21. See p. 22.)

After some exceptions made by the defendant, G. Law, and disposed of adversely to him, (Rec., vol. I, pp. 22 and 23, and
5 same pp. 25 and 26. See p. 27,) the defendant filed his answer, which is a very long one, on the 1st Nov., 1858. (See Rec., vol. 1, pp. 27 to 78. See p. 27 to 77,) and various documents annexed, covering pp. 79 to 118. (See p. 78 to 122.)

The pith of this answer as we understand it is—

1°. That the name of libellants' firm are not set forth, and that respondent has made enquiry about them in New York, and finds them to be unknown there.

2°. Complains that the items of account are not set forth, and therefore changes that the bottomry bond and suit are fraudulent contrivances of the libellants, Capt. Clark, and others, to cheat the respondent, and avers that the libellants should be compelled to prove what the bond was given for.

3°. That at Rio de Janeiro, Clark, the master, caused the old copper of the "Grapeshot" to be taken off, and some slight caulking and repairs to be done, and some second hand metal to be put on.

4°. That Capt Clark, in combination with libellants, made
6. a false and fraudulent bond, being the one sued on.

5°. That no survey was called by the master to show that such repairs were necessary.

6°. That Clark, the master, ought to have advertised for the loan; and that he did make a fraudulent advertisement.

7°. And that in this matter G. Law has been damaged $12,000.

After hearing argument and evidence, the court below gave judgment in favor of the libellants, Wallerstein, Masset & Co. (See Rec., vol. 1, pp. 192 to 215. See p. 201 to 225,) on the 31st of January, 1860.

There is no error in this judgment, and it should be affirmed.

The claimant, George Law, has taken no testimony in "Rio de Janeiro," to support the serious charges of fraud found in his answer against the libellants, though that is the only place in the world where they could properly be proved, if true.

The libellants applied by affidavit of their agent for a commission
to take testimony in Rio de Janeiro on the 8th November,
7 1858. (See Rec., vol. 1, p. 122. See p. 126.)

The libellants interrogatory, with notice to cross, were served on the counsel of Geo. Law, claimant, on the same day, 8th October, 1858, (See Rec., vol. 1. p. 123. See p. 127.)

No cross-interrogatories were filed by counsel of G. Law in time, and the interrogatories of libellant were forwarded without them; but on motion of counsel of claimant, G. Law, a commission was issued on the 18th December, 1858, to Rio to take the answers of the witnesses examined under libellants' commission, and mentioned in the cross-interrogatories. (See Rec., vol. 1., pp. 124 & 125. See p. 127.)

Libellants' commission was returned, and in court by 18 May, 1859. (See Rec., vol 1, page 126. See p. 130;) but the commissions of Geo. Law, claimant, with the cross-interrogatories, had not come back when the case went to trial on the 12 December, 1859, a year after the claimant had obtained his commission. (See Rec., vol. 1, p. 131. See p. 135.)

After the claimant appealed to this court he applied again for a commission to Rio de Janeiro, and filed his interrogatories on the 9th
April, 1860; but his commission has not been returned up to
8 this time, very nearly six months.

The inference we draw from this failure of Geo Law, claimant, to draw testimony from Rio is, that he cannot prove the allegations of fraud so severaly alledged and profusely scattered through his answer, or the other allegations he has made against plaintiffs' claim.

The testimony of Capt. Clarke, offered in behalf of libellants, was objected to in the court below. We submit that the objection was not well taken.

The opinion of Judge Story in the case of the Fortitude, 3 Sumner, was given dube tando, and since that time, 1838, it has universally admitted both in Great Britain and the United States. (See 1st Bell's commentaries on the laws of Scotland p. 529.) And there is ample proof in record without the captain's testimony to make out the libellants' case.

The testimony of Clark shows that the "Grapeshot" was in Rio
in the spring of 1858; she arrived there 2nd January, 1858,
9 consigned to Rostrom, Dutton & Co., (Rec., vol. 1, p. 168. See
p 141,) ad fin. She then leaked very badly, and had wasted over 900 bushels of salt from this leakage on the voyage to Rio, (same, p. 139. See p. 143.) He proves the account of the barque's port charges and disbursements at Rio, up to April, 1858, (same, p. 141. See p. 145.) See this account of disbursements, and port charges at. (Rec., vol. 1, pp. 174 & 175. See p. 182.)

The proposal for a loan was advertised in a newspaper in Rio. (Same, p. 141. See p. 153.)

He swears to the correctness of the accounts of the house of Rostrom, Dutton & Co., the ship's consignees in Rio. (Same, p. 142. See p. 154.) See the said account. (Same, p. 170. See p 175.)

Rostrom, Dutton & Co. is a firm of the highest commercial standing and reputation. (See testimony of Nathan (Rec., vol 1., p. 188. See p. 198.) Giraud. (Same, p. 190. See p. 199.)

Clark also proves the accounts of Harrah and McLennan, (see Rec., vol. 1, p. 142. See p. 147,) and the account itself. (Same, pp. 177 to 180. See p. 185.)

He also proves the account of Essling and Alvaranges, (same, pp. 143 and 144. See p. 148,) and the account. (Same, pp. 181 to 186. See pp. 190 to 196)

10 He proves that the bottomry was made to pay these bills,
and that he had no other means of paying, except a sale of the barque. (Same, pp. 144, 145 and 146. See pp. 149 and 150.)

The advertisement for the loan in Rio may be seen. (Same, pp. 147 and 148. See pp. 153 and 154.)

Now, this testimony is fully confirmed by the testimony of the parties in Rio who made the ship's disbursments, furnished her supplies, and made the repairs, all of which produced the necessity for the present loan. See their testimony; (Rec., vol. 1, pp. 149 to 167. See pp. 154 to 174.) See the answer of William Knight of the firm of Rostrom, Dutton & Co., to the 11th interrogatory, (p. 161. See p. 168,) he says, "this bottomry I know to have been necessary in the closing of the barque "Grapeshot's" accounts with us, and also that we received the amounts corresponding from Messrs. Wallerstein, Massett & Co."

We submit to the court that this proof makes out a complete case for the libellants.

On the other side the claimant, G. Law, has taken a good deal of testimony in the northern and eastern portions of the Union, but none in Rio.

We first call attention to our objections to the testimony claimant has taken.

11 First. The commission of the claimant, G. Law, executed in New York, and to be found in Rec., vol. II., p 6 to 7, (see p. 5 to 6,) should not be received in evidence, because the capacity of Stillman, who styles himself a United States Commissioner, and purports to have taken the depositions, is not proved or anthenticated. The certificate of the clerk of the U. S. Circuit Court in New York is insufficient for that purpose, (See Rec., vol. 2, p. 3.) The clerk of the court has no authority to certify to Stillman's official character; all a clerk can do is to certify to what appears on the records of his court. And further, because from an inspection of the original returns, it will be seen, both from the length of time the commissioner was in hand, viz, from 26 November, 1858, to 27th May, 1859, (see Rec., vol. 2, p. 2,) and from the way in which the witnesses names are written at the beginning of each deposition, that the testimony was all prepared beforehand, and not written down as delivered by the witnesses; and so it appears also from the style and manner of the depositions.

Second. The depositions taken in Boston, (see Rec., vol. 2, pp. 285 to 296; see pp. 306 to 317,) should not be received in evidence, because there is no proof of the official character of Sidney
12 Webster, styling himself a United States commissioner, and who purports to have taken said deposition.

Third. None of the ex parte testimony taken in Boston and New York, (see Rec., vol. 2, pp. 286, 296; see pp. 289, 317;) because it was taken ex parte without any necessity for so doing. The libellants should have allowed the benefit of cross-examination. (See Walsh *vs.* Rogers 13 Howard 286.) As to the testimony taken by the claimant, G. Law, in New York, to support his charges of fraud against the plaintiffs, it is unworthy of any credit. These witnesses, who testified before Stillman are unknown seamen, and quite young, testify rashly, and it is clear without knowing what they were swearing to; they go through a mass of accounts that would overwhelm a practised book-keeper, and do not hesitate to swear to anything and everything in the most circumstantial manner; and charging with fraudulent practices such a house as Rostrom, Dutton & Co., of Rio, with which, from pursuit in life, they could not possibly have had any acquaintance, and who are proved on the record to be a house of the highest integrity.

13 The claimant, George Law, set up as his defence that the libellants were the accomplices of Capt. Clark in a fraud upon him, which resulted in the bonds sued on. It was the claimant's business to make good these charges by proper proofs. He has entirely failed to do so. The law is, that if there existed an apparent necessity for the loan at Rio, from the expenditures seeming to be necessary; but was all the libellants to look to. (See the case of the Fortitude, 3 Summer, p p 251 to 255.) That such a necessity existed not only

in appearance, but in fact, is abundantly proved by the evidence adduced by the libellants from Rio.

Some proof is found in the records coming from George Law, claimant, to the effect that some years ago the house of Maxwell, Wright & Co., of Rio, had acted as agents of George Law in Rio, and that they were a house of capital and respectability. All this is undoubtedly true, but there is no proof whatever in the record to show that Maxwell, Wright & Co. were the agents of Geo. Law when the "Grapeshot" was there in the spring of 1858, or that
14 being such, the fact was known to Capt. Clark, or Rostrom, Dutton & Co., or that if all these were so that Maxwell, Wright & Co. would have advanced the money without being secured by a bottomry bond of the ship. The proof actually made by the claimant, G. Law, therefore is of no value.

Some objection was made in the court below founded on the fact that the repairs, &c., were made before the loan was contracted, but this is without force.

We ask that the judgment of the lower court be confirmed in our favor as far as it goes, and that, in addition, it be amended by awarding us the damages prayed for in our original libel for the unreasonable and oppressive delays put upon us by George Law, claimant; (see Rec., vol 1., p 5;) and we pray for all general relief.

Respectfully submitted.

(Signed) DURANT & HORNOR,
For Libellants.

NEW ORLEANS, 5 *Sept*, 1860.

15 In the Circuit Court of the United States for the eastern district of Louisiana.

Additional points of libellants.—Filed October 11*th*, 1860.

WALLERSTEIN, MASSET & CO.
vs.
BARQUE GRAPESHOT.

In reply to the additional argument filed by the complainant's proctors, those of libellant have to say—

1°. That the evidence of Hovees and Waldron cannot be listened to, by reason of the objections already urged; the attempt to injure the character and destroy the testimony of Clark in such a manner, without putting him on his guard, when nothing was easier than to do so, is in the highest decree unjust.

2°. If the testimony be admitted, it will be found not to prove, as is said by counsel, that the yellow metal shipped by the Morning Star was worth $2,800; that was what Hovees insured it at, but it was only a conjecture, he did not know its value, and there was no proof of it.

3°. It is not proved that the American gold came to N. O.
16 on the Grapeshot; the oath of Clark, at the Custom-house, says it did not.

4°. The gold appears to have been the private property of Clark, which he was not bound to use for the service of the ship.

5°. Nothing connects these facts with the minds of the libellants; they know nothing about them, and whatever the facts are worth, they are not to prejudice libellants, who innocently advanced their money on a state of facts which appeared to be fair, and after prudent inquiry.

The case of the Fortitude, already quoted, covers the case.

Respectfully submitted.

(Signed) DURANT & HORNOR,
For Libellants.

NEW ORLEANS, 10 *October*, 1860.

17 In the Circuit court of the United States, eastern district of Louisiana.

Opinion of Judge Campbell.—Filed November 10, 1860.

WALLERSTEIN, MASSET & CO.
vs.
BARQUE GRAPESHOT, GEO. LAW, cl'mt.
No. 3,301. Opinion.

This cause came on for hearing upon the record, on appeal from the District Court and additional testimony taken in this court.

The suit was commenced by the plaintiffs in the commercial name against the libellee to recover the amount of a bottomry bond executed by the master of that vessel to the plaintiffs in Rio de Janeiro for money borrowed for the use of the vessel, and for the purpose of fitting the same for sea, and which he charged upon the vessel and freight subject to the contingencies of the voyage from Rio de Janeiro, to New Orleans, with a further sum of ninteen and a half per cent. as marine interest for the voyage.

The claimant appeared and excepted to the libel, because the names of the partners of the firm of the plaintiffs were not communicated in their pleadings, and upon being overruled, answered the libel at great length and much superflouness of language. The
18 answer alleges that the obligor of the bonds, (Clark, the master)
had abused his trust as master, by deviating from his instructions in the employment of the vessel and appropriating her freight and earings to his own use, for a period of twelve months and more before the projected voyage for which he supposed loan was made; that the execution of this bond was an additional instance of malversation and infidelity in his office; that the vessel was fitted and provided, and required no repairs; that the captain was provided with ample funds to purchase all necessary supplies; that there was no survey of the vessel, no proper advertisement for moneys based upon authentic and reliable inquiries as to her state and condition, and no such inquiries on the part of the lender as the mercantile usage required before crediting the master and the vessel. The answer alleges that the bond was made in fraud of the rights of the claimant.

The District Court pronounced in favor of the libellants, and charged the proceeds of the vessel and the freight with the payment of the amount of the bond, the marine interest and legal interest on these amounts for the maturity of the debts and costs.

19 The first question that arises is upon the exception to the form of the libel.

The 23rd rule of the Supreme Court regulating the practice in admiralty prescribes that "all libels in instance causes, civil or maritime, shall state the nature of the cause, as per example, that it is a cause, civil and maratime, of contract, or of tort, or damage, or of salvage, or of possession, or otherwise, as the case may be, and if the libel be in rem, that the property is within the district; and if in personam, the names and occupations and places of residence of the parties." The libel is designed to inform the court who are the parties that are submitted to its jurisdiction, and of the cause of their controversy. Judge Story, in stating a similar rule in courts of chancery, says: "The object of giving the names and description of the parties is to enable the court and the other parties in interest to know where and to whom they may resort to compel obedience to any order or process of the court, and especially for the payment of costs, as well as to furnish distinct means of desision in all future controversies in regard to the subject-matter and the identity of the parties." (Story's Eq.
plead. S. 27. 2 Parson *vs.* Marlon 676.) Rugularly, says Lord
20 Cake, by the common law, every natural man having no name
of dignity, ought to be named in all originals by his christian name and surname. 2. Instit. 665, and a number of cases, have been decided on this principle in reference to commercial partners. 1. Metcalf and Perk., digtil. abatement, p. 7., S. 161. The same question has arisen in France upon a code of practice containing a rule like that of the Supreme Court before mentioned. Troplong says, "the partnership is sufficiently identified and distinguished by the commercial name. By this name they begin their mercantile life, and registered and advertised in the public records, and introduced to third persons and accepted as creditor or debtor. There is nothing more authentic than their manifestation by this name, nomina significandorum causa refesta sunt." 2 Trop. de societe, 692–3. But this argument, forcible as it is, does not meet with assent in France; 3. Bioche de proc 792. Dalles jurrisp. generale, t. 23, p. 221, S. 99.

My opinion is that the mode of proceeding pursued in the libel is
irregular and must be amended. I do not consider that the
21 proceedings under the libel are null, and I shall not direct the
retaking of the testimony. But as the case is ready for a hearing, and other testimony will be required, I propose to indicate my opinion with a view to direct the parties in the preparation of the case. And first, as to the testimony of the libellants. The master of the vessel (Clark) has been examined as a witness without a release; an objection has been made to his competency. In my opinion he is competent. The precise point was determined in Evans *vs.* Williams, 7. D. & E., 477. r., and the reason there assigned for receiving him as a witness is in my judgement conclusive.

The judgment in a court of law, or a decree in a court of admiralty between a third person and the owner, determines nothing as between the owner and the master in a case like the present.

If the master has committed any fraud, as has failed in performing his duty, the owner has his recourse against him. A decree in favor of these libellants would not settle that an absolute necessity for repairs existed at the date of the bond, but merely that the li-
22 bellants were authorized to make advances upon the information they had received upon reasonable inquiry. The master could not claim that because the lender might safely land on the facts exhibited to him, that he, knowing that the lender was deceived, might still properly receive the advance. There is a large class of cases that sustain this conclusion. I am entirely unwilling to extend the limits of the rules that authorize the rejection of witnesses as incompetent either in admiralty or chancery cases. I would prefer to repeal all the rules on the subject. The material inquiry in the present case is, what is a legal advance to the master. It is an advance made after due inquiry that such money was wanting to defray the expenses of the ship, for repairs, the purchase of necessaries and other things indispensable to the completion of the voyage. The lender is bound to use due care and caution in making such advances; to be reasonably satisfied by inquiries that the money is wanting for the purposes I have mentioned.

The Royal Stuart33., L. & Eg., 602. To constitute a case of
23 apparent necessity, not only must the repairs be needful, but it must be apparently necessary for the master to have a credit to procure them. If the master has funds of his own, which he ought to apply to purchase the supplies which he needs for the vessel, or if he has funds of the owner which he ought to apply for repairs, then there exists no case of actual necessity. And if the lender knows these facts, or has the means by due diligence to ascertain them, then no case of apparent necessity exists to have a credit, and the act of the master in procuring a credit does not bind the interest of the general owners of the vessel.

Thomas *vs.* Osborn, 19. How, S. C. R., 22. In receiving the testimony I feel some hesitation in concluding that the master had acted with good faith in her management, or in the execution of this bond. He testifies that the vessel was discovered to be damaged in the course of a voyage made in the latter part of the year 1857 from the Cape de Verde Island to Rio de Janeiro. He arrived in the latter port in January, 1858. In communicating with the claimant, he says:

I can't promise anything, but have taken good care of the
24 vessel, and hope to do something better than I have done. He does not mention that the vessel had suffered damage or had been unsuitable to carry cargo, nor does he refer to any loss sustained by himself, though he speaks of the cargo he had brought. It was not until April, a few days before his voyage from Rio to New Orleans, that the damaged condition of the vessel is mentioned to the claimant.

In the letter of the 7th April, he says "I have just have the

"Grapeshot" out and found a large quantity of her copper off and the vessel somewhat wormed, and what copper there was remaining was so badly worn (that I) was obliged to re-copper her at no small expense, and am afraid I will have to bottomry the vessel to pay her bill, and as I have had such infernal bad luck in obtaining freight with her that my advice is for me to insure her to the full amount. I dare not run the risk of going to sea with the vessel. If I should meet with an accident it would ruin me, if I am not already ruined
by running her." This was the first notice that the claimant
25 had; that besides the loss of the service of his vessel for fifteen
months he was also be incumbered with a debt, amounting as it subsequently appeared, to near ten thousand dollars. The testimony taken since the adjournment of the court agravates the suspicion that exists in my mind in reference to the bad faith of the master. I do not wish to be understood as deciding that the testimony last referred to is competent; a portion of it is irrelevant, and perhaps the best testimony of the facts that may be material has not been produced, but it certainly bears unfavorably upon the matter.

I reserve my opinion upon the merits of the case as it now stands. I wish to give both parties a further opportunity to improve their testimony in reference to the information possessed by the libellants, of the necessity for advances to this master, and from whom was the information derived. I wish to have further proof as to the extent of the master's resources, and what information was possessed by the libellants concerning them, and what inquiries were made on the subject. The cause is one of importance, and I desire that it may be
fully prepared for a hearing at the spring term.

26 I would further remark that I am greatly disatisfied with
the return made to the commission issued from the District Court of the examination of the witnesses Eilers, Myers, Fisher and Hillman. The commissioner has not examined the witnesses on the interrogatories and cross-interrogatories so as to extract their information for the court. He has suffered the witnesses under some of the questions to argue the case of the claimant, and to support their argument with whatever of conjecture, suspicion, surmise, and hearsay, they considered important for their cause. I do not remember to have ever met with a return to such a commission more discreditable to those who prepared it.

I shall continue the cause. The libellants have leave to amend their libel by inserting the names of the persons who compose their commercial firm. The parties, respectively, may re-examine their witnesses, or take the testimony of the same, or other witnesses on interrogatories and cross-interrogatories as in chancery cases. The clerk may issue commissions on the application of the parties to competent persons.

(Signed) J. A. CAMPBELL,
27 *Associate Justice of the Supreme Court of the U. S.*

Endorsed: Filed November 10th, 1860. Signed, J. W. Gurley, clerk.

Clerk's Office.

I certify the foregoing to be a true and correct copy from the original opinion on file in this office.

New Orleans, *Nov.* 12*th*, 1860.

Attest:

(Signed) J. W. GURLEY, *Clerk.*
By A. LAVISSON, *Dep'y Clerk.*

Decretal order.—From the minutes of Nov. 12, 1860.

Wallerstein, Masset & Co.
vs. } No. 3,301.
Barque "Grapeshot."

The following order received from Hon. J. A. Campbell, presiding judge, was ordered to be entered:

This cause having been submitted, and the court having considered the same, doth now, for reasons assigned in writing, order 28 that the cause be continued; that the libellants have leave to amend their libel by inserting the names of the persons who compose their commercial firm, and that the parties, respectively, have leave to re-examine their witnesses, or to take such further testimony as they may be advised under commission on interrogatories and cross-interrogatories.

Circuit Court of the United States for the eastern district of Louisiana.

Interrogatories of libellants to witnesses in Rio de Janeiro.—Filed Nov. 20*th*, 1860.

Wallerstein, Masset & Co.
vs. }
Barque "Grapeshot."

Interrogatories to be propounded to and answered under oath by Robert G. Scott, ju'r, U. S. consul; R. Marhait, ju'r; H. M. Corderin; Geore J. Esling; John F. McLennan; William Knight; 29 Harrah, of the firm of Harrah & McLellan; Alvarengas, of the firm of Esling & Alvarengas; Joseph S. Clark, and other merchants, traders, and competent persons, witnesses residing in the city of Rio de Janeiro, empire of Brazil, there to be produced, sworn, and examined on behalf of the libellants in the above-entitled cause.

First. Who compose the firm of Wallerstein, Masset & Co., the libellants, and what is the full name and surname of each member of the firm?

Second. Did the same persons whom you have just mentioned as comprising the firm of Wallerstein, Masset & Co., compose the said firm on the 15th day of April, 1858?

Third. How long have you known the firm of Wallerstein, Masset

& Co.? How long has the said firm been doing business in Rio? What branch of business have they chiefly been engaged in during the time you have known them?

Fourth. Is each member of the firm of Wallerstein, Masset
30 & Co. familiar with the Portuguese tongue, so as to be able
to write and speak it with facility? If not, which member is familiar with it, and which is not?

Fifth. Is each member of the said firm of Wallerstein, Masset & Co. familiar with the English language, so as to be able to write and speak it fluently? If not, which one is familiar with it, and which one is not?

Sixth. What is the mother tongue of each member of the firm of Wallerstein, Masset & Co.?

Seventh. Which one of the members of the firm of Wallerstein, Masset & Co. was it, who negotiated the loan to Captain Joseph H. Clarke, and the bottomry bond given them by said Clark on the barque Grapeshot on the 15th day of April, 1858?

Eighth. Did you have any conversation with any one (and if yea,
with which one) of the members of the firm of Wallerstein,
31 Masset & Co. in regard to the repairs required by the barque
Grapeshot in or about April, 1858? If you state you had such conversation, then please state as far, and as accurately as you can, all that occurred in the said conversation?

Ninth. Are you aware that the members of the firm of Wallerstein, Masset & Co. or any one of them (and if yea, which one) was made cognizant in any other way than by conversation with you of the repairs required by the barque Grapeshot in Rio on or about April, 1858? If yea, state what other way.

Tenth. Should it happen that there were other modes in which you know that the members of the firm of Wallerstein, Masset & Co., or any one them, became informed of the repairs required by the barque "Grapeshot" in Rio in or about April, 1858, and which are not embraced by the eighth and ninth interrogatories above propounded, then please state the same as fully and at large, as though
you were thereunto specially interrogated.

32 Eleventh. What were the revenues and means of the cap-
tain of the "Grapeshot," Joseph S. Clark, in Rio, in April, 1858? State the same, as far as they are within your personal knowledge, as accurately as you can.

Twelfth. Did the firm of Wallerstein, Masset & Co., or any member of said firm (and if yea, which one) knew anything of the means and revenues of Captain Joseph S. Clarke at the time mentioned, April, 1858? If yea, state as fully, and at large, what was the precise amount of his or their information, and how was said information derived.

Thirteenth. What inquiries were made by the firm of Wallerstein, Masset & Co., or any member thereof, on the subject of the repairs
required by the barque Grapeshot in Rio in April, 1858?

33 Fourteenth. What inquiries were made by the firm of
Wallerstein Masset & Co., or any member thereof, on the

subject of the means and resources of Captain Joseph S. Clark, of the barque Grapeshot, in April, 1858?

Fifteenth. Was there any fact, to your knowledge, in existence the time the bottomry bond was executed by Captain Joseph S. Clark, on the Grapeshot, in April, 1858, going to show that the Grapeshot did not need the repairs made upon her? Or going to show that Captain Clark had any means or revenues to pay for said repairs, without recourse to a bottomry of the ship? If yea, please detail all those facts as fully, and at large, as if you were thereto specially interrogated.

Sixteenth. Were any of the facts you have mentioned in answer to the fifteenth interrogatory known to the firm of Wallerstein, Masset & Co., or to any member of said firm? and if yea, to which one?
How did they become aware of those facts? Which of those
34 facts was known to them? In what way were they communicated to them?

Seventeenth. Were there any facts or circumstance connected with the repairs of the barque "Grapeshot," in Rio, in April, 1858, known to the libellants, Wallerstein, Masset & Co., or to any one of them, calculated to excite suspicions in the mind of a man or ordinary prudence, that these repairs were not required, or that there was anything wrong about the matter? If yea, please state what those facts were, and how they became known to Wallerstein, Masset & Co., or to any one of them.

Eighteenth. Were there any facts or circumstances known to Wallerstein, Masset & Co., in connection with the conduct of Captain Joseph S. Clark, or otherwise, calculated to excite their suspicion, or such as were calculated to excite the suspicions of man of ordinary prudence, that Captain Joseph S. Clarke possessed means
or revenues sufficient to pay for the repairs of the Grapeshot
35 without a bottomry on the vessel? And if yea, please state
fully what those facts were, and how they were brought to the knowledge of Wallerstein, Masset & Co.

Nineteenth. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully, and at large, in your answer.

New Orleans, 19*th November*, 1860.

(Signed) DURANT & HORNOR,
Of Counsel for Wallerstein, Masset & Co.

Circuit Court of the United States, fifth circuit and east. dist. of La.

Clerk's Office.

Notice.—The claimant and appellant of bark Grapeshot is required to file his cross-interrogatories to the foregoing within three

36 days from the service hereof, otherwise a commission will issue and be executed without them.

NEW OREEANS, *November* 22*d*, 1869.

Attest:

(Signed) J. W. GURLEY, *Clerk.*

By A. LAVISSON, *Dep. Clerk.*

Marshal's return.

Received Nov'r 22d, 1860, and on the same day served a copy of the within upon Messrs. Singleton & Clack, att'ys, by handing the same to Mr. Singleton in this city.

Returned Nov'r 22d, 1860.

(Signed) WM. H. BANCKS,

D'y U. S. Marshal.

Motion and order for payment of costs.—From the minutes of December 18*th*, 1860.

WALLERSTEIN, MASSET & CO.
vs.
THE BARQUE GRAPESHOT. } No. 3,301.

On motion of J. W. Gurley, clerk, and on his showing that there is deposited in the registry to the credit of this cause the 37 sum of $15,429 95-100, and that his commissions thereon amount to one hundred and fifty-four dollars and twenty-nine cents, and that his costs therein amount to twenty-three dollars and forty-five cents, making together $177 74, and that both are due and unpaid, it is ordered that the same be now paid from the money in the registry.

38 Proceedings from the United States Provisional Court for the State of Louisiana.

Rule taken by plaintiffs for removal of cause.—From minutes, January 13*th*, 1863.

WALLERSTEIN, MASSET & CO.
vs.
BARQUE GRAPESHOT. } No. 13.

13*th January*, 1863.

The court was opened at eleven o'clock, a. m. Present, Hon. Charles A. Peabody, judge.

In the case of Wallerstein, Masset & Co. *vs.* Barque "Grapeshot," on motion of Messrs. Durant & Horner, of counsel for the libellants, the court ordered that George Law, a resident of the city of New York, and owner of the said barque, show cause within thirty after a service of said notice of motion and order upon him, why the record in said suit should not be removed from the Circuit Court of the United States, in which the same is now pending on appeal, to this court, and the cause here proceeded with according to law.

39 . United States Provisional Court for the State of Louisiana, holden in New Orleans, Hon. Charles A. Peabody, judge.

Motion to remove record from U. S. Circuit Court.—Filed January 14th, 1863.

Wallerstein, Masset & Co.
vs.
Barque "Grapeshot."

On motion of Durant & Hornor, of counsel for Wallerstein, Masset & Co., libellants, and on suggesting to the court that this cause was heretofore pending and at issue in the honorable the Circuit Court of the United States for the eastern district of Louisiana, on appeal from the District Court of the United States, sitting in admiralty for the said eastern district; and on further suggesting that George Law, a resident of New York city,. is the claimant of the said barque "Grapeshot;" and on further suggesting that the purposes of justice require that this cause should be proceeded with and brought to a final hearing, which can only be accomplished by a transfer and removal of the record of said cause to this court,
40 it is thereupon ordered that the said George Law show cause
within thirty days of service of a true copy of the motion and order upon him why the record of said cause should not be removed to this court and the cause proceeded with her according to law.

Pending in the Circuit Court of the United States in and for the 5th circuit and eastern district of Louisiana.—In admir

Agreement for removal of cause.—Filed March 25, 1

Wallenstein, Massett & Co.
vs. No. 3,301.
The Barque "Grapeshot."

It is hereby stipulated and agreed that the above-na shall be transferred from the above-named Circuit Court to the United States Provisional Court for Louisiana, and that the same shall be proceeded with and tried in the said Provisional Court. The said cause shall not, however, be called up for argument before the first Monday of December, 1863. The parties respectively in the meantime to have leave to re-examine their witnesses, or take such such further testimony as they may be advised, under com-
41 mission or interrogatories and cross-interrogatories issued out
of the said Provisional Court. It is also further stipulated and agreed that should the said Provisional Court not be in existence in December, 1863, and the said commission shall have been returned executed, that then the returns to said commission may be

36 days from the service hereof, otherwise a commission will issue and be executed without them.

NEW OREEANS, *November* 22*d*, 1869.

Attest:

(Signed) J. W. GURLEY, *Clerk.*

By A. LAVISSON, *Dep. Clerk.*

Marshal's return.

Received Nov'r 22d, 1860, and on the same day served a copy of the within upon Messrs. Singleton & Clack, att'ys, by handing the same to Mr. Singleton in this city.

Returned Nov'r 22d, 1860.

(Signed) WM. H. BANCKS,

D'y U. S. Marshal.

Motion and order for payment of costs.—From the minutes of December 18th, 1860.

WALLERSTEIN, MASSET & CO.
vs.
THE BARQUE GRAPESHOT.
} No. 3,301.

On motion of J. W. Gurley, clerk, and on his showing that there is deposited in the registry to the credit of this cause the 37 sum of $15,429 95-100, and that his commissions thereon amount to one hundred and fifty-four dollars and twenty-nine cents, and that his costs therein amount to twenty-three dollars and forty-five cents, making together $177 74, and that both are due and unpaid, it is ordered that the same be now paid from the money in the registry.

38 Proceedings from the United States Provisional Court for the State of Louisiana.

Rule taken by plaintiffs for removal of cause.—From minutes, January 13th, 1863.

WALLERSTEIN, MASSET & CO.
vs.
BARQUE GRAPESHOT.
} No. 13.

13*th January*, 1863.

The court was opened at eleven o'clock, a. m. Present, Hon. Charles A. Peabody, judge.

In the case of Wallerstein, Masset & Co. *vs.* Barque "Grapeshot," on motion of Messrs. Durant & Horner, of counsel for the libellants, the court ordered that George Law, a resident of the city of New York, and owner of the said barque, show cause within thirty after a service of said notice of motion and order upon him, why the record in said suit should not be removed from the Circuit Court of the United States, in which the same is now pending on appeal, to this court, and the cause here proceeded with according to law.

39 . United States Provisional Court for the State of Louisiana, holden in New Orleans, Hon. Charles A. Peabody, judge.

Motion to remove record from U. S. Circuit Court.—Filed January 14th, 1863.

Wallerstein, Masset & Co.
vs.
Barque "Grapeshot."

On motion of Durant & Hornor, of counsel for Wallerstein, Masset & Co., libellants, and on suggesting to the court that this cause was heretofore pending and at issue in the honorable the Circuit Court of the United States for the eastern district of Louisiana, on appeal from the District Court of the United States, sitting in admiralty for the said eastern district; and on further suggesting that George Law, a resident of New York city, is the claimant of the said barque "Grapeshot;" and on further suggesting that the purposes of justice require that this cause should be proceeded with and brought to a final hearing, which can only be accomplished by a transfer and removal of the record of said cause to this court, 40 it is thereupon ordered that the said George Law show cause within thirty days of service of a true copy of the motion and order upon him why the record of said cause should not be removed to this court and the cause proceeded with her according to law.

Pending in the Circuit Court of the United States in and for the 5th circuit and eastern district of Louisiana.—In admiralty.

Agreement for removal of cause.—Filed March 25, 1863.

Wallenstein, Massett & Co.
vs. No. 3,301.
The Barque "Grapeshot."

It is hereby stipulated and agreed that the above-named cause shall be transferred from the above-named Circuit Court to the United States Provisional Court for Louisiana, and that the same shall be proceeded with and tried in the said Provisional Court. The said cause shall not, however, be called up for argument before the first Monday of December, 1863. The parties respectively in the meantime to have leave to re-examine their witnesses, or take such such further testimony as they may be advised, under com-41 mission or interrogatories and cross-interrogatories issued out of the said Provisional Court. It is also further stipulated and agreed that should the said Provisional Court not be in existence in December, 1863, and the said commission shall have been returned executed, that then the returns to said commission may be read in evidence in any court or tribunal which shall then have cognizance of the said cause, their contents being subject to all legal exceptions.

New Orleans, March 25th, 1863.

(Signed) **DURANT & HORNOR,**
For Libellants.
JOHN W. ASHMEAD,
For Claimant.

Order for removal of cause—From minutes, March 25, 1863.

MARCH 25TH, 1863.

Court was opened at 11 o'clock a. m. Present, Hon. Charles A. Peabody, judge.

MASSET & CO.
vs.
BARK "GRAPESHOT."

In the matter of Wallenstein, Masset & Co. *vs.* The Bark "Grapeshot."

42 And on motion of Durant & Hornor, att'ys for libellant, and John W. Ashmead, for claimant, and on filing their stipulation, it is ordered that the above-named cause be transferred from the United States Circuit Court to the United States Provisional Court for Louisiana, and the same proceeded with and tried in the said Provisional Court; and it is further ordered that the said cause shall not be called up before the first Monday of December, 1863, the parties respectively to have leave to re-examine their witnesses or take such further testimony as they may be advised, under the commission, or interrogatories and cross-int. to be issued out of said Provisional Court.

Commission issued June 12th.—Returned and filed December 23d, 1863.

The President of the United States of America—United States Provisional Court for the State of Louisiana to American consul, vice-consul, or commercial agent at Rio de Janeiro, Brazil, greeting: 43

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give into your authority, diligently to examine, all witnesses whatever, as well on the part of the plaintiff as for the defendant, in a certain suit now pending in our said court in case of Wallerstein, Masset & Co. are plaintiffs, and the barque Grapeshot are defendants.

Witnesses: H. M. Corderin, George J. Esling, John F. McLennan, William Knight, Alvarengas, of the firm of Esling & Alvarengas, Harrah, of the firm of Harrah & McLennan, one of the firm of Maxwell, Wright & Co., one of the firm of Phipps, Brothers & Co., August Heyn, one of the firm of Harnam & Co., Thomas Lannas, one of the firm of Rostrom, Dutton & Co., one of the firm of Klingelhoefer,

Gries & Co., one of the firm of George Rudge, jr. & Co., one of the firm of Araungo, Fillio & Co., Jose Romagnero, one of the
44 firm Stockmeyer, Mosle & Co., one of the firm of E. J. Elbert & Co., Jules Posno, one of the firm of Limpricht, Brothers & Co., Leonard Baho, Henry Harper, John C. Westwood, one of the firm of Chas. Coleman & Co., J. G. Schenback.

Therefore, we desire you that at certain times and places by you to be appointed for that purpose you cause the said witnesses to come before you, that you then and there examine them apart, upon their respective corporal oaths first taken before you upon the Holy Evangelist; that you reduce their examination to writing; and when you shall so have taken them, that you send the same, with this commission, closed up under your seal, to us in our said court, at the city of New Orleans, without delay.

Witness the Honorable Charles A. Peabody, judge of the United States Provisional Court, this 12th day of June, in the year of our Lord one thousand eight hundred and sixty-three, and in the 87th year of the independence of the United States.

(Signed) A. N. MURTAGH, *D'y Clerk.*

In the Provisional Court of the United States for the State of Louisiana.—The Honorable Charles A. Peabody, judge.

45 *Interrogatories on behalf of libellants, annexed to commission.*

WALLERSTEIN, MASSET & CO.
vs.
THE BARQUE "GRAPESHOT."

Interrogatories to be propounded to and answered under oath by H. M. Corderin, George J. Esling, John F. McLennan, William Knight, Alvarengas, of the firm of Esling & Alvarengas, Harrah, of the firm of Harrah & McLennan, one of the firm of Maxwell & Co., one of the firm of Phipps, Brothers & Co., August Heyn, one of the firm of Hamann & Co., Thomas Taunas, one of the firm of Rostron, Dutton & Co., one of the firm of Klingelhoefer, Griest & Co., one of the firm of George Rudge, jr. & Co., one of the firm of Aranngo, Fillio & Co., Jose Romagnero, one of the firm of Stockmeyer, Mosle & Co., one of the firm of E. J. Elbert & Co., Jules Posno, one of the firm of Limpricht, Brothers & Co., Leonard Baho, Henry
46 Harper, John J. C. Westwood, one of the firm of Charles Coleman & Co., J. G. Schenback, witnesses residing in the city of Rio de Janeiro, in the empire of Brazil, there to be produced, sworn, and examined on behalf of the libellants in the above-entitled cause, by virtue of the annexed commission.

First. What is your name, age, and occupation, and how long have you been engaged in your present occupation?

Second. How long have you resided in the city of Rio de Janeiro?

Third. Of what commercial or other firm are you a member?

Fourth. Do you know the firm of Wallerstein, Masset & Co., of Rio? If yea, how long have you known said firm? How long has said firm been established in Rio? What line of business does it pursue?

Fifth. Do you know who composed the firm of Wallerstein, Masset & Co.? If yea, what is the full name and surname of each member of said firm?

Sixth. Did the same persons as now compose the firm of Wallerstein & Co. compose it also on the 15th day of April, 1858, or thereabouts?

47 Seventh. Is each member of the firm of Wallerstein, Masset & Co. familiar with the Portuguese language, so as to be able to speak or write it with facility? or which of them is so and which not?

Eighth. Is each member of the firm of Wallerstein, Masset & Co. familiar with [with] the English language, so as to be able to speak or write it with facility? or which of them is so, and which not?

Ninth. What is the mother tongue of each member of the said firm of Wallerstein, Masset & Co.?

Tenth. Which one of the members of the firm of Wallerstein, Masset & Co. was it who negotiated the loan to Captain Joseph H. Clark on the barque Grapeshot on the 15th April, 1858?

Eleventh. Did you have any conversation with any, and if yea, which one, of the firm of Wallerstein, Masset & Co. in regard to the repairs required by the barque "Grapeshot" in or about the month of April, 1858? If yea, then please state, as accurately as you can, all that occurred in said conversation.

48 Twelfth. Are you aware that the members of the firm of Wallerstein, Masset & Co., or any one of them, and which, was made cognizant in any other way than by conversation with you of the repairs required by the barque Grapeshot in Rio, in or about the month of April, 1858? and if there was any other information given them, or either of them, please state fully all you know about it.

Thirteenth. What were the revenues and means of Joseph S. Clark, master of the barque Grapeshot in Rio in April, 1858, when the repairs to the Grapeshot were made and the loan on bottomry effected? State fully and accurately all within your personal knowledge.

Fourteenth. What was the ability of Joseph S. Clark, master of the barque Grapeshot to raise the amount of money in Rio necessary for such repairs in April, 1858, say the sum of $9,767 45 without security by hypothecation of the barque Grapeshot, or security of some sort? Had he any other mode of giving security for the said sum, or any amount required for repairs of the vessel then by an hopothecation of the ship or freight or both? Would you have been willing to lend him said amount or any other amount for the benefit of the vessel without any security?

49 Fifteenth. Did the firm of Wallerstein, Masset & Co., or any one of the members thereof, know anything of the means and revenues of the said Captain Joseph S. Clark, or whether or not he had any in April, 1858, in Rio?

Sixteenth. Do you know that there was in April, 1858, and at the time of the loan and bottomry bond in question, any fact or circumstance in existence and known to Wallerstein, Masset & Co., or to any member of said firm, going to show that the barque "Grapeshot" did not need the repairs made upon her? or going to show that Captain Joseph S. Clark had any means or revenues to pay for said repairs, without recourse to a bottomry bond and hypothecation of said ship? If yea, state fully all such facts and circumstances.

Seventeenth. If, in answer to the last interrogatory, you state any such facts or circumstances as are inquired about, then state whether the said facts and circumstances were known to the firm of Wallerstein, Masset & Co., or either of them.

Eighteenth. Were there any of the facts or circumstances connected with the repair of the Grapeshot, in Rio, in April, 1858, calculated to excite suspicion or distrust in the mind of a man 50 of ordinary prudence, that these repairs were not required? or that there was anything wrong about the matter? If yea, state fully what those facts and circumstances were, and state how they became known to Wallerstein, Masset & Co., if they did become so known.

Nineteenth. Were there any facts or circumstances known to Wallerstein, Masset & Co., or to either of them, in connection with the conduct of Captain Joseph S. Clark, or otherwise, calculated to excite their suspicion, or such as were calculated to excite the suspicion of men of ordinary prudence, that Captain Joseph S. Clark possessed means or revenues sufficient, or was in any manner able to pay for the repairs done on the Grape Shot in Rio, in April, 1858, without resorting to an hypothecation of the vessel? and if yea, state what those facts and circumstances were, and how they were brought home to the knowledge of Wallerstein, Masset & Co.

Twentieth. Do you know or can you set forth any other matter or thing which may be useful or of advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in 51 this cause? If yea, set forth the same fully and at large in your answer.

DURANT & HORNOR,
Proctors for Libellants.

NEW ORLEANS, 3*d April*, 1863.

52 In the Provisional Court of the United States for the State of Louisiana: The Honorable Charles A. Peabody, judge.

WALLERSTEIN, MASSET & CO.
vs.
THE BARQUE "GRAPESHOT."

Statement of objections to certain interrogatories which libellant propounded to the witnesses to be examined on this commission to Rio; and also cross-interrogatories to be propounded to and answered, under oath, by H. M. Corderin, George J. Esling, John F. McLennan,

William Knight, Alvarengas, of the firm of Esling & Alvarengas, Harrah, of the firm of Harrah & McLennan, one of the firm of Maxwell, Wright & Co., one of the firm of Phipps Brothers & Co., August Heyn, one of the firm of Hamann & Co., Thomas Taunas, one of the firm of Rostron, Dutton & Co., one of the firm of Klingelhœfer, Gries & Co., one of the firm of George Rudge, jr. & Co., one of the firm of Araungo, Fillio & Co., Jose Romuguero,
53 one of the firm of Stockmeyer, Mosle & Co., one of the firm Limpricht, Brothers & Co., Leonard Baho, Henry Harper, John J. C. Westwood, one of the firm of Charles, Coleman & Co., J. G. Schoenback, witnesses, residing in the city of Rio de Janerio, in the Empire of Brazil, there to be produced, sworn, and examined on behalf of the libellants in the above-entitled cause by virtue of the annexed commission.

Eleventh interrogatory of the libellants. All the matters inquired about in this interrogatory are objected to by the claimant as incompetent testimony, inasmuch as it seeks to give in evidence the conversation of the libellant's witnesses with the libellant, which can in no way affect the claimant, and cannot be introduced against him.

Twelfth interrogatory of libellant: This interrogatory is objected to by the claimant, because it asks not for any facts, but the opinion, of the witnesses as to whether the libellant was aware that the bark "Grapeshot" needed repairs in any other way than from conversation with the witnesses proposed to be interrogated, and because it seeks to make the conversations between the libellant and his witnesses evidence against the claimant.

54 Thirteenth interrogatory of libellant. Cross-interrogatory to libellant's thirteenth interrogatory. If, in answer to this interrogatory, you state that Joseph S. Clark, master of the bark Grapeshot, had no pecuniary means at Rio, in April, 1858, to your knowledge, when the repairs to the "Grapeshot" were made, and the loan on bottomry procured, please state whether you knew that the copper which was taken from the bark "Grapeshot" was shipped by Joseph S. Clark for New Orleans, on the bark Morning Star, from Rio, on his own account, and whether it was not insured by him for his own benfit in the Union office at New Orleans, for the sum of $2,500 dollars; also state whether you had knowledge that said Joseph S. Clark, captain of said bark "Grapeshot, shipped in April, 1858, in his own vessel, $7,380 dollars in American gold on his own account, which was consigned to Robert Hower, of the city of New-Orleans.

Fourteenth interrogatory of libellant. So much of the libellant's fourteenth interrogatory as inquires whether the libellant's witnesses would have been willing to lend Joseph S. Clark, captain of
55 the bark "Grapeshot," $9,767 45-100 dollars, or any other amount, for the benefit of the vessel, without security, is objected to as incompetent and irrevelant to the issue, the question in controversy not being what the parties interrogated would have done. To the residue of the matters inquired about in said interrogatory, the following cross-interrogatory is to be propounded: If you

state that Joseph S. Clark, master of the bark Grapeshot, had no ability to raise in Rio, in April, 1858, the sum of $9,767 45-100 dollars, without security, and without hypothecation of the bark "Grapeshot," then state how you derived your knowledge, and whether it was from conversation with Clark himself; and also whether you had any knowledge of said Clark or his means, except from representations made to you by himself. If you state that said Clark had no mode of giving security for the said sum of $9,767 45-100 dollars, or any amount required for the repairs of the vessel, except by an hypothecation of the ship or freight, or both, then state how you derived this knowledge, whether it was from representations made
by Clark himself, or from facts known to you personally,
56 independant of any statements of his. Had Joseph S. Clark
told you in Rio, in April, 1858, when he stated that he required $9,767 45-100 dollars, that he was possessed of the copper which had been taken from the "Grapeshot," which was valued and insured for $2,500 dollars, and, in addition, he had $7,380 in American gold, would you say that he could not have raised the sum of $9,767 45-100 dollars without the hypothecation of the bark "Grapeshot" and her freight?

Fifteenth interrogatory of libellants. The claimant objects to this interrogatory, on the ground that it asks simply the opinion of the witnesses whether the firm of Wallerstein, Masset & Co., or any of the members thereof, knew anything as to the means and resources of Captain Joseph S. Clark, and whether said firm, or any of its members, knew that he had or had not any means and revenues in April, 1868, in Rio. It would be impossible for said witnesses to know what knowledge said firm, or any of its members, had of the means of Captain Joseph S. Clark in April, 1858, unless they derived the
knowledge from conversations with said firm, or some of its
57 members, which statement or conversations are incompetent
as testimony against the claimant.

Sixteenth interrogatory of libellant. This interrogatory is objected to as incompetent, for the reason that it inquires whether there was any facts or circumstances known to libellants, or to any member of libellants' firm, going to show that the bark "Grapeshot" did not need the repairs made upon her, or that Captain Joseph S. Clark had no means to pay for said repairs without recourse to a bottomry bond, said inquiries asking simply for the opinion of the witnesses, and it being impossible for said witnesses to state what facts and circumstances were known to the libellants, or any of them, unless said libellants had themselves communicated their knowledge to the witnesses, and which communications would be incompetent as evidence against the claimant.

Seventeenth interrogatory of libellant. Cross-interrogatory to libellant's seventeenth interrogatory. If, in answer to the sixteenth interrogatory, you state any facts or circumstances, such as are inquired
about therein, and you state the same were known to the firm
58 of Wallerstein, Masset & Co., or either of them, then state
how you know that any of the said facts and circumstances

were known to said firm, and which of said facts and circumstances were known to said firm, or either of its members, and whether the said knowledge, on your part, was not derived from conversations and statements made by said firm, or some of its members.

Eighteenth interrogatory of libellant. This interrogatory is objected to by the claimant, on the ground that all the matters inquired about in said interrogatory are the opinion of the witnesses as to whether there were any facts or circumstances connected with the repairs of the "Grapeshot" in Rio, in 1858, calculated to excite suspicion or distrust in the mind of a man of ordinary prudence that the repairs were not required, or that there was anything wrong about the matter, which opinions are incompetent as testimony. The question whether what occurred was calculated to excite suspicion or distrust, either in the libellants or others, being a question of law, to be determined by the court upon the facts proved in the case.

Nineteenth interrogatory of libellant. So much of this interrogatory as requires the witnesses to state facts and circumstances
59 known to Wallerstein, Masset & Co., or either of them, in connection with the conduct of Captain Joseph S. Clark, or othwise calculated to excite suspicion in them, or in the minds of men of ordinary prudence, that Captain Joseph S. Clark possessed means sufficient to pay for the repairs done on the Grapeshot in Rio, in April, 1858, without resorting to an hypothecation of the vessel, is objected to as incompetent. To the residue of the matter inquired about in said nineteenth interrogatory, the following cross-interrogatory is to be put: If you state any facts and circumstances, as known to Wallerstein, Masset & Co., or either of them, in reference to the repairs done to the Grapeshot in Rio, in April, 1858, or, as to the means possessed by Joseph S. Clark to pay for them, then state how you knew that the firm of Wallerstein, Masset & Co., or any of its members, knew of such facts, and whether or not your information, that they did know the said facts and circumstances, was derived from conversations with said firm, or some of its members.

Cross-interrogatory to be propounded to Knight, of the firm
60 of Rostrom, Dutton & Co.

Cross-interrogatory. State the date when the account of the firm of Rostrom, Dutton & Co. against the bark Grapeshot was furnished to the libellants in this case.

Cross-interrogatory to be propounded to the members of the firm Harrah & McLennan, or to such members of said firm as may be examined by the libellant.

Cross-interrogatory. State the date when the account of the firm of Harrah & McLennan against the barque Grapeshot was furnished to the libellants in this case.

Cross-interrogatory to be propounded to Geo. J. Esling, of
61 the firm of Esling and Alvarengas, or any member of said firm who may be examined.

Cross-interrogatory. State the date when the account of the firm of Esling & Alvarengas against the barque Grapeshot was furnished to the libellants in this case.

Cross-interrogatory to be propounded to such of libellants' witnesses as are familiar with the handwriting of Geo. J. Esling and Captain Joseph S. Clark, or the handwriting of either of them.

First cross-interrogatory. Should an agent, a party, attend before the commissioner designated to execute this commission on behalf of the claimant, and should such agent or party attending on behalf of the claimant show you an envelope addressed to Robert Howes, of New Orleans, enclosing a bill of lading, please state whose handwriting is the direction of the said envelope, and whether the same is not in the handwriting of George J. Esling.

62 (Let said envelope be marked by the commissioner, a person executing this commission, and annexed to and returned with the same.)

Second cross-interrogatory. Should the bill of lading, which was enclosed in said envelope, be shown to you, please state in whose handwriting is the signature to the said bill of lading, and whether the same is not in the handwriting of Captain Clark.

(Let the bill of lading be marked by the commissioner or person executing this commission and annexed to and returned with it.)

(Signed) JOHN H. ASHMEAD,
Proctor for Claimant.

Return of commission.—Filed December 23rd, 1863.

63 Depositions of witnesses, produced, sworn, and examined on different days, therein named, in the month of September, A. D. 1863, at the United States Consulate Rio de Janeiro, Brazil, under and by virtue of a commission issued out of the U. S. Provisional Court for the State of Louisiana in a certain cause, therein depending, and at issue between Wallerstein, Masset & Co., plaintiffs, and the barque Grapeshot, defendant.

[SEAL]

Depositions.

CONSULATE OF THE UNITED STATES,
Rio de Janeiro, Sept 19th, 1863.

Before me, James Monroe, consul of the United States for Rio de Janeiro, and the dependencies thereof, appointed commissioner by the United States Provisional Court for the State of Louisiana to examine witnesses in the case of Wallerstein, Massett & Co. vs. The Barque Grapeshot, personally appeared F. M. Cordeiro, who, being duly sworn upon the Holy Evangelists of Almighty God, deposes and declares as follows; and his said disposition having been by me reduced to writing, was subscribed by him in my presence on the day and year above mentioned.

64 To the first interrogatory he says: My name is F. M. Cordeiro. I am twenty-six years of age, and my occupation is that of assistant in the office of the consul of the United States at Rio Janeiro, where I have been employed for eight years.

To the second interrogatory he says: Eight years.

To the third interrogatory he says: I am a member of no firm.

To the fourth interrogatory he says: I have known the firm ever since I have lived in Rio Janeiro. I cannot say (signed F. M. Cordeiro) how long they have been established. They have a store in this city for the sale of silks, dry goods, and jewelry. They have also been in the habit of advancing money on bottomry for the repair of vessels.

To the fifth interrogatory he says: The firm of Wallerstein, Masset & Co. is composed, to the best of my knowledge and belief, of
the following persons, namely: Messrs. Carlos Masset, Leon Barot,
Nicolas Lambert, Bento Jose Gomez, Gustavo Masset, and
65 Oscar Meixuer. The firm is at present known as Charles
Masset & Co.

To the sixth interrrogatory he says: There have been changes in the firm since the year 1858. The firm was then known as Wallerstein, Masset & Co., and, to the best of my knowledge and belief, was composed of the following members, namely: Messrs. Barnard Wallerstein, Carlos Masset, Leon Barat, and Nicolas Lambert.

To the seventh interrogatory he says: I believe all the members of the old and new firms speak and write Portuguese except Lambert.

To the eighth interrogatory he says: I believe that Carlos Masset, Barat, Gomez, Gustavo Masset, (signed F. M. Cordeira) and Meixuer, are acquainted with the English language; the others not.

To the ninth interrogatory he saith: The mother tongue of Gomez
is Portuguese; of Meixuer is German; of all other members of
66 both the old and new firms is French.

To the tenth interrogatory he says: I believe it to have been Charles Masset.

To the eleventh interrogatory he saith: I have no such conversation.

To the twelfth interrogatory he saith : I am not aware of any such circumstance.

To the thirteenth interrogatory he saith: I have no knowledge in regard to Captain Clark's resources, except a report which I heard after the Grapeshot had sailed.

To the fourteenth interrogatory he saith: I have no personal knowledge of Capt'n Clark's means. I would have been unwilling to have lent him the money without the hypothecation of his vessel.

To the fifth interrogatory he saith : I do not know.

To the sixteenth interrogatory (signed F. M. Cordeira) he saith:
I am not aware that Wallerstein, Masset & Co. had a knowl-
67 edge of any such facts or circumstances.

To the seventeenth interrogatory he saith : I have no knowledge upon this point.

To the eighteenth interrogatory he saith : I am not aware of any such facts or circumstances.

To the nineteenth interrogatory he saith : I know of no such facts or circumstances.

To the twentieth interrogatory he saith: I was in the consular

office in the year 1858. The Grapeshot was here during the early part of that year. After she had been some time in port it was reported at this office that she needed rapairs. The consignees, Roshon, Dutton & Co., advertized for money on bottomry bond to repair the vessel. Wallerstein, Masset & Co. made a proposal to advance the money, which was accepted. The whole transaction in regard to the loan on the bond was conducted in the usual regular and proper manner. I heard no suspicion of unfair conduct on the
68 part of any one expressed until after the Grapeshot had sailed. It was then reported that (signed F. M. Cordeira) Capt. Clark had a considerable amount of gold which he might have used to repair the vessel, but I had no knowledge upon the subject myself. About the 24th of March Mr. Esling brought to this office an invoice of copper to be forwarded by him on his own account to New Orleans on the Morning Star. He said the copper was some which had been for some time in his store. It was afterwards reported that this copper came from the Grapeshot, but I have no knowledge upon the subject. I have never heard any suspicion expressed of a want of good faith on the part of Wallerstein, Masset & Co. They always had a good reputation for the upright manner in which they did business pertaining to vessels in port. The Morning Star cleared from this port March 24th, 1858, and the Grapeshot April 15th, 1858.

Cross-interrogatories.

69 To the cross-interrogatory to the thirteenth interrogatory he saith: I have no further knowledge upon these points.

(Signed) F. M. CORDEIRA.

To the cross-interrogatory to the fourteenth interrogatory he saith: I have no further knowledge upon these points. Had Captain Clark told me that he had the gold and copper referred to, and had I believed him to be telling the truth, I should have said he could have raised the money for repairing the Grapeshot without hypothecation.

To the cross-interrogatory to the seventeenth interrogatory he saith: I have no knowledge on this point.

To the cross-interrogatory to the nineteenth interrogatory he saith: I have no knowledge upon this point.

The remaining cross-interrogatories were read in the hearing of this deponent, but as he declares that they do not relate to him, and that he has no knowledge in regard to them, he can say nothing in reply to them.

70 And further this deponent saith not.

(Signed) F. M. CORDEIRA.

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro, September 21, 1863.

Before me, James Monroe, the commissioner aforesaid, in the case aforesaid, personally appeared C. J. Harrah, who, being duly sworn upon the Holy Evangelists of Almighty God, deposes as follows; and his deposition having been reduced to writing by me was subscribed by him on the day and year above mentioned.

To the first interrogatory he saith: My name is C. J. Harrah; my age is forty-seven years; I am a railroad contractor by occupation, in which business I have been engaged for the five years last past.

To the second interrogatory he saith: Eleven years.

To the third interrogatory he saith: Roberts, Harvey & Co.

71 To the fourth interrogatory he saith: I have known Mr. Charles Masset for eight years, but am not acquainted with all the members of the firm. I do not know how long they have been established in Rio Janeiro. They sell silks and dry-goods.

To the fifth interrogatory he saith: I cannot answer this question in full. I know Charles Masset is (signed C. J. Harrah) one of the firm.

To the sixth interrogatory he saith: There has been some change; I cannot say how much. Charles Masset was then, and is still, a member of the firm. Wallerstein has left the firm.

To the seventh interrogatory he saith: All the members of the firm of whom I have any knowledge are able to speak and write Portuguese.

To the eighth interrogatory he saith: Charles Masset is familiar with the English language.

To the ninth interrogatory he saith: I do not know.

72 To the tenth interrogatory he saith: Charles Masset.

To the eleventh interrogatory he saith: I had no such conversation.

To the twelfth interrogatory he saith: I am not aware of any such circumstance.

To the thirteenth interrogatory he saith: I had a good deal of conversation with Captain Clark and others in regard to his means. I formed the opinion that he had no means.

To the fourteenth interrog (signed C. J. Harrah) atory he saith: I think he could not have raised the money without hypothecation. My opinion is he could have given security in no other way. On no account would I have lent him the money without hypothecation—indeed, on application from him at the time, I refused to do so.

73 To the fifteenth interrogatory he saith: I have no knowledge on this point.

To the sixteenth interrogatory he saith: I know of no fact showing that the Grapeshot did not need repairs, or that Captain Clark had any means to make such repairs without hypothecation.

To the seventeenth interrogatory he saith: I know of no such facts or circumstances.

To the eighteenth interrogatory he saith: I know of no fact or circumstances calculated to excite suspicion.

To the nineteenth interrogatory he saith: I know of no such facts, and I think I should have heard of them had any such existed.

To the twentieth interrogatory he saith: I know of no further (signed C. J. Harrah) matter or thing to set forth in this place, except that it was generally believed that Wallerstein, Masset & Co. advanced the money in good faith, and that the borrowing of money on hypothecation was necessary.

74 *Cross-interrogatories.*

To the cross-interrogatory to the thirteeenth interrogatory he saith: I have no knowledge of the matters spoken of in this interrogatory.

To the cross-interrogatory to the fourteenth interrogatory he saith: I have already stated that it was from conversation with Clark and others that I formed the opinion that he had no means of repairing his vessel. Had he told me that he possessed the gold and the copper referred to I should have thought he could have raised the money.

To the cross-interrogatory to the seventeenth interrogatory he saith: I have no knowledge of any such facts or cicumstances.

To the cross-interrogatory to the nineteenth interrogatory he saith: (C. J. Harrah) I know nothing of any such facts or circumstances.

75 To the cross-interrogatory to be propounded to the member of the former firm of Harrah & McLennan, who may be examined by the commissioner, he saith: Not having access at present to the books of the firm I cannot say positively, but it must have been early in April, 1858.

The other cross-interrogatories having been read in the hearing of this deponent he declares that they either have no reference to himself or are such that he can impart no information in regard to them.

And further this deponent saith not.

(Signed) C. J. HARRAH.

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro, Sept. 22, 1863.

Before me, James Monroe, the commissioner aforesaid, in the case aforesaid, personally appeared J. Merven Carrere, who, being duly sworn upon the Holy Evangelists of Almighty God, deposes as follows; and, his deposition having been by me reduced to writing, subscribed his name to the same.

76 To the first interrogatory (signed J. Merven Carrere) he saith: My name is J. Merven Carrere; I am thirty-two years of age; my occupation is that of a general merchant, in which I have been engaged for eleven years.

To the second interrogatory he saith: Eleven years.

To the third interrogatory he saith: Maxwell, Wright & Co.

To the fourth interrogatory he saith: I have known the firm mentioned ever since I have been in Rio. I cannot say how long it has been established here. They are importers of most articles for a retail business; they also export coffee, and for several years have advanced money for repairs of ships in distress.

To the fifth interrogatory he saith: I know most of them, but could not give their names in full.

To the sixth interrogatory he saith: No; there have been changes.

Wellerstein has died, and three new partners have been admitted.

77 To the seventh interrogatory he saith: They are all familiar with the Portuguese lan (signed J. Merven Carrere) guage, except one, Mr. Lambert.

To the eighth interrogatory he saith: They are all familiar with the English language except Mr. Lambert.

To the ninth interrogatory he saith: French is the mother of all of them, except Mr. Gomes and Mr. Meixner.

To the tenth interrogatory he saith: I suppose it was Charles Masset, as he was the only partner of the firm then here.

To the eleventh interrogatory he saith: I had no such conversation.

To the twelfth interrogatory he saith: I am not aware of any such circumstance.

To the thirteenth and fourteenth interrogatories he saith:
78 I have no knowledge in regard to Capt. Clark's means, or his
means of giving security. I never advance money for repairs of vessels except upon hypothecation.

To the fifteenth interrogatory he saith: I do not know.

To the sixteenth interrogatory he saith: I am not aware that Wallerstein, Masset & Co. had (signed J. Merven Carrere) a knowledge of any such facts.

To the seventeenth interrogatory he saith: I have no knowledge of any such facts or circumstances.

To the eighteenth interrogatory he saith: I am not aware that there were at that time any facts or circumstances calculated to excite suspicion.

To the nineteenth interrogatory he saith: I have no knowledge of any such facts or circumstances.

To the twentieth interrogatory he saith: I know of nothing
78 further to add in add in this connection.

Cross-interrogatories.

To the cross-interrogatory to the thirteenth interrogatory he saith: I had no knowledge of the copper or the gold referred to in this interrogatory.

To the cross-interrogatory to the fourteenth interrogatory he saith: If it had been known that he had the amount of gold and copper stated he could not have borrowed money from any one, either with or without hypothecation, unless he could have given some satisfactory explanation of his conduct. (Signed J. Merven Carrere.)

To the cross-interrogatory to the seventeenth interrogatory he saith: I know knothing of any such facts or circumstances.

To the cross interrogatory to the nineteenth interrogatory he saith: I have no knowledge on this point.

To the two cross-interrogatories to be propounded to such of
80 libellant's witnesses as are familiar with the handwriting of
Geo. J. Esling and Captain Joseph S. Clark, or the hand-

writing of either of them, he saith: In the year 1860 a commission to examine witnesses in the case of the Grapeshot was sent to R. G. Scott, jr., then U. S. consul at this port, which was duly executed and forwarded to the United States. Upon the examination of the witnesses at that time Mr. R. C. Wright produced the bill of lading and the envelope referred to in the cross-interrogatories, which were duly attached by Mr. Scott to the deposition there forwarded, and consequently are not now in our possession to produce, having been only in the original form.

The remaining cross-interrogatories I have read in the hearing (signed J. Merven Carrere) of this deponet, who declares tha [illegible] have no reference to him. And further this deponent saith not.

(Signed) J. MERVEN CARRERE.

81 Consulate of the United States of America,
Rio de Janeiro, Sept. 22d, 1863.

Before me, James Monroe, the commissioner aforesaid, in the case aforesaid, personally appeared J. J. C. Westwood, who, being duly sworn upon the Holy Evangelists of Almighty God, deposed as follows; and his depositions having been by me reduced to writing, subscribed his name to the same.

To the first interrogatory he saith: My name is J. J. C. Westwood. I am her Britanic majesty's consul at this port. I am forty-five years of age, and have been engaged in my present occupation ten years.

To the second interrogatory he saith: Twenty-five years.

To the third interrogatory he saith: None.

To the fourth interrogatory he saith: I have known the firm referred to for many years. They have been (signed Jno. J. C. Westwood)
82 established in Rio ever since I have resided here, but there been changes in the firm. They are importers of French goods, and for some years have been in the habit of lending money upon bottomry, for the repair of vessels.

To the fifth interrogatory he saith: I do not know all the members of the firm. I am acquainted with Charles Masset, the managing partner, but not with the other members.

To the sixth interrogatory he saith: I cannot say.

To the seventh interrogatory he saith: Charles Masset is familiar with the Portuguese language. I cannot say whether the other members of the firm are or not.

To the eighth interrogatory he saith: Charles Masset is acquainted with the English language. I do not know how it is with the rest.

83 To the ninth interrogatory he saith: Charles Masset mother tongue is French.

To the tenth interrogatory he saith: I do not know, but suppose it would be Masset.

To the eleventh interrogatory he saith: I recollect no such conversation.

(Signed) JNO. J. C. WESTWOOD.

To the twelfth interrogatory he saith: I am not aware of any such circumstance.

To the thirteenth interrogatory he saith: I do not dnow.

To the fourteenth interrogatory he saith: I had no knowledge of Captain Clark's means, nor would I, had I been a mercantile man, have lent him the money without security.

To the fifteenth interrogatory he saith: I know nothing about this point.

To the sixteenth interrogatory he saith: I have no knowledge on this point.

84 To the seventeenth interrogatory he saith: I know nothing of any such facts or circumstances.

To the eighteenth interrogatory he saith: I have no knowledge on this point.

To the nineteenth interrogatory he saith: I have no knowledge of any such facts or circumstances.

To the twentieth interrogatory he saith: From my possition as British consul, I know that the firm of Wallerstein, Masset & Co. (signed Jno. J. C. Westwood) are in the habit of advancing money on bottomry for vessels of all nations; and I consider they are more in this line of business than any other house in Rio de Janeiro, and that, so far as my experience is concerned, I have always found them straight forward and honorable men in all their proceedings connected with the advance of money on bottomry.

Cross-interrogatories.

85 To the cross-interrogatories to the thirteenth interrogatory he saith: I know nothing upon this point.

To the cross-interrogatories to the fourteenth, seventeenth, eighteenth interrogatories he saith: I have no knowledge of the points presented in these interrogatories.

The remaining cross-interrogatories: I have read in the hearing of this deponent, who declares that they in no way relate to him, and he can give no (signed Jno. J. C. Westwood) information concerning them. And further this deponent saith not.

(Signed) JNO. J. C. WESTWOOD.

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro, Sept. 23rd, 1863.

Before me, James Monroe, the commissioner aforesaid, in the case aforesaid, personally appeared William Knight, who, being duly sworn upon the Holy Evangelists of Almighty God, deposed as follows; and his deposition having been by me reduced to writing, he has
86 subscribed his name to the same.

To the first interrogatory he saith: My name is William Knight. I am forty-two years of age; am a broker's clerk by occupation, in which business I have been engaged for the two years last past.

To the second interrogatory he saith: I have resided in Rio de Janeiro since the year 1847.

To the third interrogatory he saith: None.

To the fourth interrogatory he saith: I have known the firm referred to since 1847. They were (signed Wm. Knight) established in Rio before I came to the city. They are importers of French goods, and for several years, to my knowledge, have been the principal takers of bottomry in the different consulates of this city.

To the fifth interrogatory he saith: It is not in my power to answer this question.

87 To the sixth interrogatory he saith: From report, I suppose there have been changes.

To the seventh interrogatory he saith: All I know upon this point is, that Charles Masset, one of the members of the firm, is familiar with Portuguese.

To the eighth interrogatory he saith: Charles Masset speaks and writes English fairly.

To the ninth interrogatory he saith: I cannot say.

To the tenth interrogatory he saith: Charles Masset.

To the eleventh interrogatory he saith: I had no such conversation.

To the twelfth interrogatory he saith: Not to my knowledge.

To the thirteenth interrogatory he saith: I did not know that he had any means, and in his (signed Wm. Knight) dealings with the house of Rostrom, Dutton & Company he only had money paid to
88 him on credit of the ship of which they were consignees.

To the fourteenth interrogatory he saith: I believe Captain Clark had no other means of raising this money than by bottomry. At a time earlier than the date of bottomry I, in the name our firm, did lend him some sovereigns—I think about one hundred—to go for a cargo of salt, to keep the vessel employed at a time when there was no freight offering. I did this, believing in his good faith. I cannot state exactly the amount I lent him, as I have not now the books of the firm at my command. I would not have lent him a large sum except on bottomry.

To the fifteenth interrogatory he saith: Not to my knowledge; I believe not.

To the sixteenth interrogatory he saith: I do not know of any such fact or circumstance.

To the seventeenth interrogatory he saith: I have no knowledge of any such matter. (Signed Wm. Knight.)

89 To the eighteenth interrogatory he saith: I know of no such facts or circumstances.

To the nineteenth interrogatory he saith: I know of no such facts. The captain appeared to have full control of his vessel and the employment of her, and her owners never communicated with the consignees, although they had abundant time to do so had they suspected there was anything wrong and desired to give any caution.

To the twentieth interrogatory he saith: I know of nothing further to add in this connection.

Cross-interrogatories.

To the cross-interrogatory to the 13th interrogatory he saith: I know nothing of the copper or the gold. After the Grapeshot had sailed I heard the story of the copper, but never heard anything about the gold.

To the cross-interrogatory to the fourteenth interrogatory he saith: I knew nothing of Clark, except from himself, and heard nothing from any one that would lead me to doubt his good faith. He never told me that he had the gold and copper (signed Wm. Knight) re-
90 ferred to. Had he doneso, I should, of course, before balancing his account have requested the gold in payment, and, if necessary, the consignment to our New Orleans correspondent of the copper.

To the cross-interrogatory to the seventeenth interrogatory he saith: I have no knowledge upon this point.

To the cross-interrogatory to the nineteenth interrogatory he saith: I know nothing of this matter.

To the cross-interrogatory to be propounded to William Knight, of the firm of Rostrom, Dutton & Co., he saith: It is impossible to give the exact date, as the books of the company are no longer in my possession; but the date would, as is usual in Rio, on the occasion of advertising for the loan on bottomry.

This deponent declares that the remaining cross-interrogatories which have been read in his hearing have no reference to him-
91 self. And further this deponent says not.

(Signed) W. KNIGHT.

92 CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janiero, Sept. 25, 1863.

Before me, the commissioner aforesaid, in the case aforesaid, personally appeared John K. Potsh, who, being duly sworn upon the Holy Evangelists of Almighty God, deposed as follows; and his deposition having been by me reduced to writing, he has subscribed his name to the same.

To the first interrogatory he saith: My name is John H. Potsch; I am forty-one years of age; my occupation is that of book-keeper, in which business I have been engaged for twenty years.

To the second interrogatory he saith: Twenty-one years.

To the third interrogatory he saith: None.

To the fourth interrogatory he saith: I have known the firm spoken of for twenty-one years. They were established in Rio before I came to the city. They are importers of French and other goods, and are in the habit of advancing money on bottomry.

93 To the fifth interrogatory (signed John H. Potsch) he saith: Charles Massett is and has been one of the members of the firm; I am not personally acquainted with the others.

To the sixth interrogatory he saith: I do not know.

To the seventh interrogatory he saith: Charles Massett is familiar with the Portuguese language.

To the eighth interrogatory he saith: I do not know.

To the ninth interrogatory he saith: Charles Massett's mother tongue is French.

To the tenth interrogatory he saith: Charles Massett.

To the eleventh interrogatory he saith: I had no such conversation.

To the twelfth interrogatory he saith: I am not aware of any such fact.

94 To the thirteenth interrogatory he saith: I do not know.

To the fourteenth interrogatory he saith: I have no knowledge of Capt. Clark's means, or his means of giving security. I would not have lent him much money without hypothecation of his vessel. (Signed John H. Potsch.)

To the fifteenth interrogatory he saith: I do not know.

To the sixteenth interrogatory he saith: I have no knowledge of any such fact or circumstances.

To the seventeenth interrogatory he saith: I have no knowledge on this point.

To the eighteenth interrogatory he saith: I know of no such facts or circumstances.

To the nineteenth interrogatory he saith: I know of no such facts.

To the twentieth interrogatory he saith: I was book-keeper for George J. Esling in the year 1858, when the Grapeshot was in this port for repairs. Esling left this city about two years since,
95 and I have been informed now resides in Philadelphia, in the United States. Alverangas, who was formerly in partnership with Esling, left that firm before the Grapeshot was here for repairs. Esling at that time managed the business alone. Alvarangas is now dead.

Cross-interrogatories.

To the cross-interrogatory to the thirteenth interrogatory (signed John H. Potsch) he saith: I heard nothing about the copper, and knew nothing about it, while the Grapeshot was here. After she had sailed Mr. Esling showed me a bill of lading for the copper, signed by the captain on the Morning Star. He said he had shipped the copper from the Grapeshot on the Morning Star. This was after the Morning Star was burnt. He had never spoken of the matter to me while the Grapeshot was here, and I had seen no paper referring to it, and had known nothing about it. I never at any time heard or knew anything in regard to gold possessed by Captain Clark.

96 To the cross-interrogatory to the fourteenth interrogatory he saith: Captain Clark never said anything to me about copper or gold.

To the cross-interrogatory to the seventeenth interrogatory he saith: I knew of no such facts or circumstances.

To the cross-interrogatory to the eighteenth interrogatory he saith: I have no knowledge on this point.

(Signed) JOHN H. POTSCH.

To the cross-interrogatory to be propounded to George J. Esling he saith: I was not in partnership with Mr. Esling, but I can answer this question very nearly. The bill referred to was not furnished to Wallerstein, Masset & Co., but to the consignees, Rostrom, Dutton & Co. The bill must have been presented two or three days before the Grapeshot sailed; and she sailed about the middle of April, 1858.

The remaining cross-interrogatories have been read in the hearing of this deponent, but he declares that they have no reference to himself, and that he can give no information in regard to them.

97 And further this deponent saith not.

(Signed) JOHN H. POTSCH.

CONSULATE OF THE UNITED STATES,
Rio Janeiro, *Sept.* 28*th*, 1863.

Before me, James Monroe, the commissioner aforesaid, in the case aforesaid, personally appeared, Adolphus Klingelhoefer, who, being duly sworn (signed A. Klingelhoefer) upon the Holy Evangelists of Almighty God, deposed as follows; and his deposition having been by me committed to writing, he has subscribed his name to the same.

To the first interrogatory he saith: My name is Adolpus F. Klingelheofer. I am twenty-seven years of age, and am a merchant by occupation, in which business I have been engaged since the year 1860.

To the second interrogatory he saith: Seven years.

To the third interrogatory he saith: I belong to the firm
98 of Klingelheofer & Co.

To the fourth interrogatory he saith: I have known the firm spoken of since 1856. I cannot say how long it has been established in Rio. They are importers and retailers of dry goods, and are in the habit of lending money on bottomry.

To the fifth interrogatory he saith: Charles Masset is one of the firm. I cannot give the names of all.

To the sixth interrogatory he saith: There have been changes in the firm since 1858. Wallerstein is dead. Charles Masset was then, and is still, a member of the firm.

To the seventh interrogatory he saith: Charles Masset is familiar with the Portuguese language, and so are some other members of the firm.

To the eighth interrogatory he saith: Charles Masset has a fair knowledge of English.

99 To the ninth interrogatory he saith: I cannot answer this question fully. Charles Masset's mother tongue is French.

To the tenth interrogatory he saith: It was Charles Masset.

To the eleventh interrogatory he saith: I had no such conversation.

To the twelfth interrogatory he saith: I am not aware of any such facts or circumstances.

To the thirteenth interrogatory he saith: I do not know.

To the fourteenth interrogatory he saith: I know nothing of Captain Clark's means. I would (signed A. Klingelhoefer,) not have lent him the money without hypothecation.

To the fifteenth interrogatory he saith: I cannot say.

100 To the sixteenth interrogatory he saith: I know nothing of any such fact or circumstances.

To the seventeenth interrogatory he saith: I have no knowledge on the point.

To the eighteenth interrogatory he saith: I cannot say.

To the nineteenth interrogatory he saith: I do not know.

To the twentieth interrogatory he saith: I have nothing further to add.

Cross-interrogatories.

To the cross-interrogatory to the thirteenth interrogatory he saith: I know nothing of the gold or the copper.

To the cross-interrogatory to the fourteenth interrogatory he saith: I know nothing of these points.

101 To the cross-interrogatory (signed A. Klingelhoefer) to the seventeenth interrogatory he saith: I have no knowledge of this point.

To the cross-interrogatory to the nineteenth interrogatory he saith: I know nothing of these matters.

The remaining cross-interrogatories have been read in the hearing of this deponent, but he declares that they have no reference to himself, and that he has no knowledge regarding them. And further this deponent saith not.

(Signed) A. KLINGELHOEFER.

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro, Sept. 29th, 1863.

Before me, James Munroe, the commissioner aforesaid, in the case aforesaid, personally appeared George Rudge, jr., who, being duly sworn upon the Holy Evangelists of Almighty God, deposed as follows; and his deposition having been by me reduced to writing, he has subscribed his name to the same. (Signed George Rudge, jr.)

102 To the first interrogatory he saith: My name is George Rudge, jr. I am thirty-six years of age; am a merchant by occupation, in which business I have been engaged for the last eighteen years.

To the second interrogatory he saith: I have resided in Rio for eighteen years.

To the third interrogatory he saith: George Rudge, jr., & Co.

To the fourth interrogatory he saith: I have known the firm for eighteen years. They were established in Rio before I came to the city. Their business is that of merchants, and they are in the habit of advancing money upon bottomry.

To the fifth interrogatory he saith: Charles Masset is the head of the firm. I know some of the others, but cannot give their name in full.

To the sixth interrogatory he saith: There have been some changes in the firm since the year 1858. Charles Masset was then, and still is, in the firm.

To the seventh interrogatory (signed George Rudge, jr.,)
103 he saith: Charles Masset is familiar with Portuguese.

To the eighth interrogatory he saith: Charles Masset is familiar with English.

To the ninth interrogatory he saith: The mother tongue of Charles Masset, and of some others of the firm, is French.

To the tenth interrogatory he saith: Charles Masset.

To the eleventh interrogatory he saith: I had no such conversation.

To the twelfth interrogatory he saith: I am not aware of any such circumstance.

To the thirteenth interrogatory he saith: I have no knowledge of Captain Clark's means.

To the fourteenth interrogatory he saith: I do not know that he had any means besides hypothecation. I would not have lent him the money without security.

104 To the fifteenth interrogatory he saith: I do not know. I think they had no such knowledge.

To the sixteenth in (signed George Rudge, jr.) terrogatory he saith: I have no knowledge upon these points.

To the seventeenth interrogatory he saith: I know of no such fact or circumstance.

To the eighteenth interrogatory he saith: I am not aware of any such facts or circumstances.

To the nineteenth interrogatory he saith: Not to my knowledge.

To the twentieth interrogatory he saith: I know of nothing further to add in this connection.

Cross-interrogatories.

To the cross-interrogatory to the thirteenth interrogatory
105 he saith: I know nothing of the gold or the copper.

To the cross-interrogatory to the fourteenth interrogatory he saith: I know nothing of these points; Captain Clark never made any communication to me on the subject.

To the cross-interrogatory to the seventeenth inter (signed George Rudge, jr.) rogatory he saith: I know nothing of any such facts or circumstances.

To the cross-interrogatory to the nineteenth interrogatory he saith: I have no knowledge of any such facts or circumstances.

The remaining cross-interrogatories have been read in the hearing of this deponent, but he declares that they have no reference to himself, and that he has no knowledge in regard to them. And further this deponent saith not.

(Signed) GEORGE RUDGE, Jr.

106 CONSULATE OF THE UNITED STATES,
Rio de Janeiro, *Sept.* 29, 1863.

Personally appeared before me, James Monroe, the commissioner aforesaid, in the case aforesaid, Henry Harper, who, being duly sworn upon the Holy Evangelist of Almighty God, deposed as follows; and his deposition having been by me reduced to writing, he has subscribed his name to the same. (Signed Henry Harper.)

To the first interrogatory he saith: My name is Henry Harper; I am forty-four years of age; my occupation is that of ship broker, in which business I have been engaged for twenty-four years.

To the second interrogatory he saith: I have resided in Rio all my life.

To the third interrogatory he saith: None.

To the fourth interrogatory he saith: I have known the firm referred to almost ever since its establishment. It has been 107 established about twenty-five years. They are importers of goods, and are in the habit of advancing money for the repairs of vessels on bottomry.

To the fifth interrogatory he saith: The head of the firm is Charles Masset. I cannot give the names of all.

To the sixth interrogatory he saith: There have (signed Henry Harper) been some changes in the persons composing the firm since 1858. Charles Masset was then, and is still, a member of the firm.

To the seventh interrogatory he saith: Charles Masset is familiar with the Portuguese language.

To the eighth interrogatory he saith: Charles Masset is familiar with the English language.

To the ninth interrogatory he saith: Charles Masset mother tongue is French.

To the tenth interrogatory he saith: Charles Masset.

108 To the eleventh interrogatory he saith: I had no such conversation.

To the twelfth interrogatory he saith: I am not aware of any such fact.

To the thirteenth interrogatory he saith: I do not know that he had any means beyond the credit of the ship.

To the fourteenth interrogatory he saith. Without letters of credit or actual cash (signed Henry Harper) in hand he would have had no means of repairing his vessel, except by hypothecation of vessel and freight. I would not have lent him the money without hypothecation.

To the fifteenth interrogatory he saith: I do not know, but think they did not.

To the sixteenth interrogatory he saith: I am not aware that they knew of any such fact or circumstance, and should think they 109 did not, as I know them to be careful men about lending money.

To the seventeenth interrogatory he saith: I know of no such facts or circumstances.

To the eighteenth interrogatory he saith: I am not aware of any such facts or circumstances.

To the nineteenth interrogatory he saith: I know of no such facts.

To the twentieth interrogatory he saith: I know of (signed Henry Harper) nothing more to be added in this connection.

Cross-interrogatories.

To the cross-interrogatory to the thirteenth interrogatory he saith: I know nothing upon this point.

To the cross-interrogatory to the fourteenth interrogatory he saith: I do not know that Captain Clark had any money, but if he had money enough belonging to the ship to make the repairs, then, of
110 course, he had no occasion to borrow.

To the cross-interrogatory to the seventeenth interrogatory he saith: I have no knowledge on this point.

To the cross-interrogatory to the 19th interrogatory he saith: I have no knowledge on this point.

The remaining cross-interrogatories having been read in the hearing of this deponent, (signed Henry Harper,) but he declares that they have no reference to himself, and that he has no knowledge in regard to them. And further this deponent says not.

(Signed) HENRY HARPER.

CONSULATE OF THE UNITED STATES OF AMERICA,
Rio de Janeiro Sept. 30th, 1863.

I hereby certify that the foregoing depositions of F. M. Cordeiro, C. J. Harrah, J. Merven Carrere, John J. C. Westwood, William Knight, John H. Postch, A. Klingelheofer, George Rudge, jr., and Henry Harper, were duly sworn to and subscribed in my
111 presence, at the place and times therein set forth, and that signatures of the said witnesses are in their own true and proper handwriting. I further certify that I have now executed the foregoing commission as far as it is practicable for me to do, some of the witnesses named therein having died, others having removed, and others having no knowledge pertaining to the case.

Given under my hand and seal of office the day and year above mentioned.

[SEAL.] (Signed) JAMES MONROE,
Commissioner.

Hearing and order continuance.—From the minutes of Dec. 30, 1863.

WALLERSTEIN, MASSETT & CO.
vs.
THE BARQUE "GRAPESHOT," &C. } No. 13.

Court was opened at 11 o'clock a. m. Present, Hon. Chas. A. Peabody, judge.

WALLERSTEIN, MASSET & CO.
vs.
BARK GRAPESHOT.

This cause came on this day for argument. Messrs. Durant 112 and Horner appearing for the libellants, and Mr. John W. Ashmead, of New York, for claimant, Geo. Law. Mr. T. J. Durant opened the case for libellants, and after his conclusion Mr. Ashmead opened for the claimant, and pending which the court adjourned to Thursday, the 31st instant, at 11 oclock a. m.

Hearing and submission of cause.—From the minutes of December 31, 1863.

WALLERSTEIN, MASSET & CO.
vs.
THE BARK "GRAPESHOT," &C.

Court was opened at 11 o'clock a. m. Present, Hon. Charles A. Peabody, judge.

WALLERSTEIN, MASSET & CO.
vs.
THE BARK "GRAPESHOT," &C.

The argument of John W. Ashmead in the above cause was resumed this day, at the termination of which the final argument of T. J. Durant was heard. The judge took the papers, reserving his decission.

113 Document filed in evidence by claimant. Filed December 30th, 1863:

UNION INS. CO., NEW ORLEANS, *Dec.* 30, 1863.

SIR: We find on reference to our books that Rob't Howes insured with the company under date of 28th May, 1858, $7,380, on Am. gold on board bark "Grapeshot," from Rio Janeiro to New Orleans.

Respectfully,
J. M. CRAWFORD, *Sect'y.*

United States Provisional Court, State of Louisiana.

Reasons for judgment.—Filed June 13th, 1864.

WALLERSTEIN, MASSET & CO.
ag'st.
THE BARK "GRAPESHOT" AND OWNERS,
George Law, claimant.

114 Before Hon. Charles A. Peabody, judge.

This cause has been transferred to this court from the Circuit Court of the United States. It came unto the Circuit Court of the United States on appeal from the District Court of the United States for the eastern district of Louisiana, sitting in admiralty.

The suit was brought to enforce the collection of a bottomry bond made in Rio de Janeiro, for about $10,000 on the barque "Grapeshot." The District Court of the United States pronounced in favor of the libellants, and charged the proceeds of the vessel and freight with the payment of the amount of the bond, the marine interest, and legal interest in the amount from the maturity of the debt and costs.

From this decision appeal was taken by the claimant to the Circuit Court of the United States before Judge Campbell, where it was brought to a hearing on appeal, and also on the further evidence taken in that court in 1860.

115 On that hearing Mr. Justice Campbell ordered the case to be continued until a subsequent time, to enable the parties to improve their testimony in reference to the information possessed by the libellants of the necessity for advances to the master, and from whom the information was derived; and further, to procure further proof as to the extent of the master's resources, and what information was possessed by the libellants concerning them.

First. As to the necessity for the loan, the plaintiff have not given the usual, and perhaps best, evidence in such cases of the condition and necessities of the vessel; a report made, after a survey of the vessel by experts competent to decide such a question. Such a survey would have afforded strong and ample evidence, prima facie, of the necessity. Having omitted this, the plaintiffs are left to prove, as best they may, the fact of necessity of the repairs and supplies furnished, and paid for with the proceeds of this loan. The first reason urged by the claimant, which comes, I think, under
116 this head, is that the barque was not at the time engaged in a voyage of the owner or within his contemplation.

The evidence on this subject is not sufficient to establish the fact. The barque had had a wayward career, no doubt, but there is no evidence that the discretion vested in the master was not broad enough to cover all he did, and authorize him to do it if he thought it best for the owner. There is no evidence of any such deviations or diversions of the vessel, as to show that the voyage was not the voyage of the owner.

There is still more entire failure of evidence to show that the libellants had any notice of, or means of knowing, or reason to believe or suspect, that the vessel had been diverted from the legitimate voyage of the owner so far, that the voyage in which she was engaged was not his or authorized by him.

To warrant the invalidating of this security for that cause, and the forfeiture of the money loaned by the libellants, there must have been, not merely the fact of such a deviation or diversion, but some notice of, or some reason to suspect the fact, or at least some power or possibility of knowing or learning it by the lenders.

117 The second ground of defence is, that the repairs for which

this money was expended were not necessary for the voyage. On this subject there is considerable conflict of evidence, enough to require an examination of it in a general way.

The course of the master on the subject was not the usual and proper course in such cases. He should have called a survey and have ascertained the necessity for the repairs by the examination and report of experts competent to determine the fact, as to himself, and to justify him, and also to prove it for the lenders and enable them to maintain their rights.

This he did not do, and the lenders did not make the loan on the faith of any such evidence. The lenders, as well as the master, in this respect departed from the usual safe course, and neither of them is entitled to the benefit of the rule, that one using all usual precautions is to be dealt with delicately even though he err. Having made the loan without the precautions as to evidence to themselves and for themselves, (for it would have answered the twofold purpose of
proving the fact to them, and enabling them to prove it to a
118 court,) they have taken upon themselves the burthen of establishing the facts on which their right to recover depends.

First and chief among these is the fact of the necessity of these repairs to the prosecution of the voyage on which the barque was engaged, and it may suggest the extent of their evidence, necessary on this subject, to say that they are bound to show that the repairs were apparently, and so far as they with reasonable diligence could learn, necessary to the prosecution of the voyage on which the barque was apparently, and as far as they, with the use of reasonable diligence, could learn, with the consent of the owner, properly engaged.

As to the condition of the barque and the necessity for these repairs, the plaintiffs show by the testimony of the master, Capt. Clark, that the barque leaked badly for some time before. He says: "She leaked very badly during the entire voyage to the Cape Verde islands and back—more particularly on her return with cargo. During said voyage she washed over nine hundred bushels of salt, by the water
washing over the skin and dunnage. The fact that she was in
119 a leaky condition at Rio de Janeiro is also testified to by two
other witnesses, McLennen and Esling. The latter of these does not show any particular knowledge, or means of knowledge, of her condition, and his testimony is very brief and general, and only to the fact that she leaked. MacLenan, however, was a ship-carpenter, and made the repairs for which this loan was made, and, therefore, was likely to be exceedingly well informed on the subject. He says that she leaked badly, and that in repairing her he found her false keel needed repairs; that he repaired it and put in many new graving pieces, and used twencils, and caulked her from keel to [to] flankstear; re-sheathed and re-metalled her. That he found many sheets of copper off her bottom, and many worn through, and that in consequence the ship was in many places wormed. The copper entirely worn out that came off the vessel, and about one-fourth part of it a regular honeycomb.

This is the substance of the evidence on the subject of the condition

of the barque, and not merely on that question, but also the
120 much broader question of the necessity for the repairs which
were actually made.

The libellants have contended themselves with proving the leaky and needy condition of the barque, and have left to inference the question whether any, and if any, what, and whether these repairs were necessary. I suppose that it not unreasonable to ask a court to infer that a vessel which leaks badly for months and has the defects testified to by McLenan, needs repairs, and I do not know that it would be so to ask a court under circumstances like these in this case to know, without evidence on the subject, that caulking and coppering, and other things shown to have been done to this vessel, were the character and kind of repairs a vessel in such circumstances would require.

It appears that she leaked badly, and that this had come upon her without any accident to her, and this tends to show that the leaking was of a nature that would be cured by, and would require for its cure, re-caulking and re-coppering, and such other less considerable
repairs as were bestowed on this vessel. This evidence makes
121 out a prima facie case of necessity of repairs no doubt; and I
think that it shows further, that the repairs made on her were the kind that she needed, and consequently that the case of the libellants as to them is made out.

This covers the great mass of the bill. The items which the claimant insists shall be deducted are objected to for another reason, which needs not to be considered here.

To meet the evidence, the claimant attempts to show—

First. That the barque was tight and staunch and needed no repairs; and

Second. That the repairs made were not good and suitable and well made.

The first of these is in the nature of disproof of the plaintiffs' case, and is the unverse of the libellants' propositions in that respect. On this point he has called several witnesses, seamen on board both previous and subsequent to the making of the repairs, and their testimony is to the effect that the barque leaked very little before the repairs were made, not more than most staunch vessels in good repair
do. They add that she did not cease to leak or even leak
122 materially less after they were made.

The fact that she leaked badly before the repairs were made is important as a part of the evidence, showing that she needed repairs, and on this point the number of witnesses who testified for the claimant that she did not leak is as great as that of the libellants, who testify that she did.

But the evidence of the libellants is much more satisfactory and convincing than that of the claimant. Their witnesses seem much more likely to be correctly informed and to be accurate and reliable in their statements. They are landsmen, merchants, and the master of the barque, and one of them is a ship-carpenter, the same who made the repairs. Those of the claimant are seamen—most of them sailors before the mast—a class of men proverbially unreliable as witnesses, unhappily.

But the leakness of the vessel is only one of the facts tending to show that she needed repairs. The ship-carpenter who repaired her testifies to many others which would establish the fact very well, even
if the fact of her leaking at the time were not established.
123 This evidence I have referred to, and in some measure recapitu-
lated above, and it needs not to be repeated here. On this subject his testimony is better than would be that of almost any other man, and on this point he is not materially, if at all, contradicted.

That the vessel did leak badly at the time and that she had done so for months previous, and throughout the passage to the Cape de Verde Islands and back, I am convinced from the evidence.

That her copper was in bad condition, worn very thin, and in many places worn entirely through, and sheets of it were off and entirely gone, and that parts of her hull were in a very bad condition, and decayed and wormed, and even honeycombed, and needed to be replaced with sound timbers, as stated by McLennan, I am told by that witness, and it is not disproved by any evidence in the case, and therefore I cannot doubt.

Whether the money obtained was judiciously applied, and the repairs were not merely necessary, but were made to the extent and
in the manner most beneficial, the lender is not bound accu-
124 rately to ascertain or show.

The repairs made were essential, and such as were called for in a general way, and the lender is not bound to scrutinize further the application of the money to make out his case.

Two other defences are insisted on by the claimant—

First. That the master had the means of making the repairs out of funds in his hands belonging to the owner.

Second. That the owner had credit at Rio Janeiro with which the repairs might have been made.

There are affirmative matters of defence, and the burthen of establishing them by evidence is on the claimant.

On the first point, he has given some evidence showing the previous earnings of the vessel, and the amount of money the master received, or should have received; and in a suit against the master this evidence might, perhaps, be sufficient to put him on the defensive. He has not shown, or attempted to show, what the previous expenses
and call for evidence from him, but had been, and much less
125 that this money or any considerable part of it remains in the
master's hands or under his control, and this evidence fails to
reach the libellants.

They are not shown to have had any knowledge or notice, or means of knowledge or cause of suspicion even to put them on inquiry. On the whole there is not satisfactory evidence that he had at that time funds of the owners, or which he was bound to use for them in preference to making a loan; and if it be assured, for the sake of argument, that he had, then there is no evidence connecting the libellants with the fact so as to make them responsible for knowledge or notice, or reason for suspicion to put them on inquiry. On the contrary, some of the witnesses examined, to show that there were some rumors that the captain had some funds which he might have used, testify that these rumors arose wholly after the loan was made and after the vessel sailed from Rio, and this is no doubt the weight of the evidence on that point.

On the point that the money might have been raised on the
126 credit of the owner the failure of the evidence is almost total.
One witness testifies that it might have been so raised, but his testimony is open to criticisms so apparent and palpable that it evidently amounts only to an expression of an opinion, and that opinion appears from his subsequent testimony as to his means of knowledge not to be well founded, so that the case on that point is without evidence that can be relied on. The testimony of seamen and of men having no appearance of knowledge or qualification to judge on a point of that kind is of little avail, and hardly needs to be considered in this decision.

In the answer of the claimant fraud is charged on the libellants, and on the previous hearings of this case, both in the District and Circuit Courts of the United States, bad faith and fraud on their part seem to have been insisted on earnestly. On the argument, however, in this court, this point was expressly withdrawn and abandoned by the counsel, and this relieves me of the necessity of examining the
evidence on that point.

127 The loan is admitted to have been made by them in good
faith, and although acts of bad faith on the part of the master of which they had knowledge or notice, actual or constructive, might have put them on enquiry and called for an amount of care and scrutiny very different from what they could otherwise have been held to exercise. There is no evidence at all connecting them with such acts by any circumstances which should have caused them to suspect.

As to the necessities of the vessel, I have dwelt chiefly on the subject of repairs, for the reason that the necessity for the supplies did not seem to be questioned by the evidence or on the argument, and if the repairs are upheld, the supplies so by much stronger evidence and with much less objection on the part of the claimant.

In the view I have taken of the case the necessities of the vessel did actually exist and required the expenditure which was made, and
it is not natural to ascertain what inquiries the libellants made
128 and whether they used diligence to ascertain her condition and
wants. If it were found that the necessities did not really exist, the appearance of things and the diligence of the libellants in using the means of information might become important and might, in such an emergency, save their claim perhaps; but where the lender relies on and proves the facts to have existed, it ceases to be important for him to show the reasons by which he was induced to believe in their existance as a basis of his right to recover, so as to the means at the command of the captain capable of being applied to the repairing and furnishing of the vessel, if the claimant had shown that there were such means, it would have been incumbent on the libel-

lants perhaps to show that they did not know and could not with the use of reasonable diligence ascertain the fact or anything to lead them to the opinion that they existed; but as there is no sufficient evidence that he had such means, no evidence is required to show that the libellants did not know and could not with reasonable diligence ascertain it.

129 I have come to the same conclusion with Judge McCaleb, of the District Court of the United States, and by a route very similar to that by which he travelled.

So far as the opinion of Judge Campbell of the Supreme Court, sitting in the circuit, indicates his mind in this case, I am happy to find no evidence that I differ materially from him. He desired further information as to the means used by the libellants to ascertain the condition and necessities of the barque, and ordered further proofs taken. The evidence I do not think indispensable. The further proofs were taken but threw little if any additional light on the subject. He did not decide that the libellants could not recover without further evidence showing diligence in efforts to ascertain the necessities of the vessel, nor do I think that his opinion leads to the conclusion that he would so have decided. I have decided that they could so recover on the evidence adduced as showing her necessities for repairs to enable her to proceed with her voyage.

The judgment of the District Court must be affirmed.

United States Provisional Court for the State of Louisiana.

130 *Judgment.*

Wallerstein, Masset & Co.
vs.
The Bark Grapeshot and owner, George Law, claimant.

Judgment

Monday, *the* 13*th day of June*, 1864.

Present, The Hon'ble Charles A. Peabody, judge.

For reasons assigned in the written opinion of the court this day delivered and on file, it is ordered that the judgment of the District Court of the United States in this case be affirmed; and it is therefore ordered, adjudged, and decreed that, in favor of Wallerstein, Masset & Co., libellants, there be judgment against the proceeds of the barque "Grapeshot" and the freight earned on her last voyage from Rio de Janeiro to New Orleans, and deposited in the registry for the full sum of $9,767 45, the am't of the bond aforesaid,

131 together with 19½ per cent. interest, $1,904 65, making a sum total due 29th June, 1858, of $11,672 10, (eleven thousand six hundred and seventy-two 10-100 dollars,) together with legal interest thereon at the rate of five per cent. per annum from judicial demand, viz.: from the 3rd day of July, A. D. 1858, until paid, and costs of suit, to be taxed by the clerk, and that the libellants have a special lien and privilege on said proceeds for the satisfaction of his decree.

Rendered June 13th, 1864.

Signed June 17th, 1864.

By the court. (Signed) JOHN PEABODY, *Clerk.*

132 *Proceedings in the United States Circuit Court for the sixth circuit and eastern district of Louisiana.*

Circuit Court of the United States in and for the fifth circuit and eastern district of Louisiana.

Notice of claimant.—Filed July 26th, 1864.

WALLERSTEIN, MASSET & Co.
vs.
THE BARQUE GRAPESHOT. } In admiralty. No. 3,301.

George Law, the claimant in the above case, intending to remove the above case to the Supreme Court of the United States for review, in case a decree should be entered in the Circuit Court of the United States against him and the fund in controversy in said suit, to wit, the sum of $15,429 95, having been paid into the registry of the said court on December 18th, 1860, he hereby objects to any further proceedings being taken in the said Circuit Court without notice to him or to his counsel, or to any order or decree
133 being made by the said court in reference to the distribution of the said fund, or any part thereof, without the notice to him or to his counsel.

(Signed) JOHN W. ASHMEAD,
Proctor for George Law.
Per J. Q. A. FELLOWS.

JULY 16TH, 1864.

Motion to docket cause.—From the minutes of Dec. 3, 1866.

WALLERSTEIN, MASSET & Co.
vs.
THE BARQUE "GRAPESHOT," &c. } No. 3,301.

NEW ORLEANS, *Monday December 3d,* 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Howell, district judge.

On motion of J. Q. A. Fellows, herein appearing as the proctor of George Law, claimant herein, and upon suggesting to the court that this case was taken from this court and tried, and decided in the United States Provisional Court for Louisiana, and further suggesting the act of Congress approved 28th July, 1866, relating to
134 said Provisional Court, it is ordered that the record in this case, now in the custody of the clerk of the United States District Court for the district of Louisiana, be delivered to the custody of the clerk of the Circuit Court for the fifth circuit of the district of Louisiana, and given its former place on the docket, docketed in said court, and that the judgment rendered in said Provisional Court be taken and considered the judgment of this court, to be taken from the day of this motion, as is provided in such act of Congress.

Circuit Court of the United States in and for the district of Louisiana, in admiralty.

Petition for appeal.—Filed December 6th, 1866.

WALLERSTEIN, MASSET & Co.
vs.
THE BARQUE "GRAPESHOT," HER TACKLE, apparel, furniture, &c., Clark,
135 master, and George Law, claimant.

UNITED STATES OF AMERICA:

Now comes George Law, claimant of the said barque "Grapeshot," her tackle, proceeds, &c., libelled in this cause by John Q. A. Fellows, his duly constituted proctor, and petitioning, respectfully represents and makes known unto this honorable court that this cause, heretofore pending in this court, was by rule and order of the United States Provisional Court for the State of Louisiana, which said court claimed to have power and authority in the premises, removed from this court, and transferred to said United States Provisional Court for further poceedings and trial; that in accordance with the rules governing proceedings in said Provisional Court, said cause was brought on for trial in said court, and after hearing and trial said Provisional Court did make and enter a final judgment and decree in favor of the said libellants in this cause, and against the said barque "Grapeshot," her tackle, apparel, &c., and against the proceeds thereof, which were deposited in the registry of the old District Court before the rebellion, and are now in the U. S. Treasury, and against your petitioner, as the claimant thereof,
136 for the sum of , besides the costs of this cause, all of which appears by the record of the proceedings in this cause had in said Provisional Court; that a short time after said final decree was so made as aforesaid, and before said decree was in any way enforced, said Provisional Court ceased to exist; that on the day of , A. D. 1866, an act and law of the United States relating to said Provisional Court, having been duly passed by Congress, was approved by the President of the United , and became and was a law, which said act and law, among other things enacted, provided and declared that any and all suits or proceedings pending or existing in said Provisional Court, of which the Circuit Court of the United States held in and for the district of Louisiana could take jurisdiction under the laws of the United States, should be transferred to this court, and that all judgments, orders, decrees, and decisions of the said United States Provisional Court for the State of Louisiana, relating to the causes so transferred to this, the said Circuit Court, by virtue of the said act of Congress, should, as soon as so transferred to this said Circuit Court, at
137 once become the judgment, orders, decrees and decisions of this court. And your petitioner would further represent, that all the proceedings and records, orders, decrees, and decisions of the

said United States Provisional Court ever made and entered therein in this cause, or in anywise relating thereto, have been and are duly transferred to this court, and were on the day of , A. D. 1866, duly filed and entered in this court, and by the effect of said act of Congress became and are the records of this court, and that said final decree in this cause, so rendered on this cause by said Provisional Court in favor of said libellant's and against said barque "Grapeshot" or her proceeds, and against said claimant, became and is in law in all respects the final decree of this court in this cause; that said decree and the matter in dispute in this cause is a greater amount than the sum of two thousand dollars exclusive of all costs, as appears by the record; that said claimant in this cause, your petitioner, alleges that he believes said final decree is in all things contrary to the law and evidence in this cause; that your petitioner feels greatly aggrieved and injured thereby, and believes that
138 justice has not been done him in said decree.

Wherefore the premises considered, and in order that said final decree may be reviewed by a court of competent jurisdiction to review, revise, and correct and reverse said decree, your petitioner, said claimant, prays that this honorable court grant and allow said claimant an appeal from said decree to the Supreme Court of the United States, to the term thereof to be held in the city of Washington next following such appeal, upon said claimants furnishing and filing a bond or stipulation in this cause in such sum and amount as the court shall determine in accordance with the rules of this court, with good and sufficient sureties, conditioned that said claimant answer all and such costs as upon affirmance of the said decree appealed from, may be adjudged or decreed to the respondents in appeal, and against said claimant by reason of such appeal, and that said appellant prosecute his appeal with effect in the Supreme Court, and in all other things in accordance with the rules and practice of this court in such cases, as well as the terms established by
139 law, and your petitioner will ever pray, &c.

(Signed) J. Q. A. FELLOWS, *Proctor.*

Order allowing appeal.

An appeal is allowed in this case as prayed for, returnable to the Supreme Court of the United States, the first Monday in December, 1867, the appellant giving bond in the sum of one thousand dollars, with good and solvent security, conditioned as the law directs.

Dec'r 6th, 1866.

(Signed) E. H. DURRELL, *Judge.*

Bond for Appeal.—Filed December 6, 1866.

Know all men by these presents, that we, George Law, as principal, and M. J. Newman as security, are held and firmly bound unto Wallerstein, Masset & Co., and all parties in interest, their executors, administrators and assigns, in the sum of one thousand dollars, 140 for the payment whereof we bind ourselves, our heirs, executors and administrators, by these presents. Signed and sealed this 3rd day of December, one thousand eight hundred and sixty-six.

Whereas the above bounden George Law has this day appealed from a judgment rendered by the Provisional Court of Louisiana, and this day made of record in the Circuit Court of the United States for the district of Louisiana, under an act of Congress approved July 28, 1866, entitled an act to provide for suits, judgments, &c., of the U. S. Provisional Court, &c., in a suit entitled Wallerstein, Masset & Co. *vs.* The Bark Grapeshot, &c.

Now, the condition of the above obligation is such, that the above bound George Law shall prosecute his said appeal, and shall satisfy whatever judgment or claim there may be made against him for costs or charges incident to said appeal, otherwise the said M. J. Newman, his surety, shall be liable in his place.

(Signed) GEORGE LAW
Pr. J. Q. A. FELLOWS, *his Att'y.*
(Signed) M. J. NEWMAN.

141 United States Circuit Court, 5th circuit and district of Louisiana.

I, Charles Claiborne, clerk of said court, hereby certify that the foregoing, 40 pages manuscript, together with 230 and 382 additional pages manuscript, bound as vols. 1 and 2, separately from the present vol. 3, and by me certified on the 1st May, '67, inst., form a true and complete transcript of all the proceedings had, documents filed, and evidence adduced on the trial of the case of Wallerstein, Masset & Co. *vs.* The Barque Grapeshot, her proceeds and freight, Geo. Law, claimant and appellant, instituted originally in the U. S. Dist. Court, E. D. of Louisiana, under the No. 7,370; appealed to the Circuit Court and there docketed under the No. 3,301; removed to the U. S. Provisional Court, by order of 25 March 1863, and there docketed under the No. 13, and again re-transferred to the Circuit Court, where it resumed its former place on the docket, with the exception of the following documents, which are missing and cannot be found, viz:

142 Interrogatories filed May 26, 1860.
Commission issued " " "
Affidavit for cont'ce, filed June 13, 1860.
Defendant's brief " 9, Oct. 1860.
Depositions " 20, Oct. 1860.
Additional brief of def't 11, " "
Affidavit " 20, Nov. 1860.
Commission issued 20, " "
Return commission, filed 9 May, 1861.

In faith whereof, I grant these presents, under my signature and seal of said court, at New Orleans, this 1st day of May, 1867, and of the independence of the U. S. of America the 91st year.

[SEAL.] CHS. CLAIBORNE, *Clerk.*

142 I, Edward H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 1 day of May, A. D. 1867.

E. H. DURELL, *Judge.*

143 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Wallerstein, Massett & Co., greeting:

You, and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, then and there to answer unto an appeal duly taken and allowed from a certain cause in admiralty in the Circuit Court of the United States for the district of Louisiana, wherein George Law, claimant of the bark Grapeshot, her tackle, apparel, &c., and the proceeds thereof, is appellant, and you are appellees, to show cause, if any there be, why the judgment of the said Circuit Court of the United States for the district of Louisiana so appealed from should not be corrected, and speedy justice done to to the parties in that behalf.

Witness the Honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, this seventh day of December, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

144 Endorsed: United States Circuit Court. Citation of appeal. Wallerstein, Massett & Co. *vs.* Bark Grapeshot, &c. No. 3,301

Marshal's Return

Received December 8th, 1866, and on the 11th day of same month and year served a copy of the within citation of appeal on Wm. S. Benedict, esq., successor to F. J. Durant, esq., attorney for plaintiff in suit, personally at his office, No. 18 Carondelet Street, in this city, he accepting service of the same.

M. EGAN, *U. S. Marshal.*

NEW ORLEANS, *December* 11th, 1867.

145 N. B.—The references in this body of the transcript indicate the record on file, and the marginal references show the pages of the copy itself.

CHS. CLAIBORNE, *Clerk.*

○

Supreme Court of the United States.

No. 179.

The Bark Grapeshot, George Law,
Claimant, Appellant,

vs.

Wallerstein, Masset & Co.

Appeal from Circuit Court of the United States for the District of Louisiana.

BRIEF FOR PLAINTIFF IN ERROR.

C. Cushing,
Counsel.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

In the Supreme Court of the United States.

NO. 179.

THE BARK GRAPESHOT, GEORGE LAW, Claimant, Appellant,

vs.

WALLERSTEIN, MASSET & CO.

Appeal from Circuit Court of the United States for district of Louisiana.

STATEMENT.

On the 3d of July, 1858, Wallerstein, Masset & Company, of Rio de Janeiro, Brazil, filed a libel in this case in the district court of the United States for the eastern district of Louisiana, against the bark Grapeshot, to obtain payment of a bottomry bond given to the libellants by the captain of the Grapeshot, at Rio Janeiro, to secure the payment of $9,769 45, and a premium thereon of 19½ per cent., for the voyage, under which proceedings the Grapeshot was seized and sold. The Grapeshot sold for $14,200, and after deducting certain fees and expenses, the residue, $13,805 85, was deposited in the registry of the court. Besides this, $2,055 20 were deposited in the registry by the consignees of the bark, as the proceeds of her freight.

George Law appeared as owner and claimant of the bark, and filed exceptions to the libel, on two grounds:

1. Because libellants had not set forth their Christian names.
2. Because no bill of particulars accompanied the libel.

These exceptions were overruled.

The claimant, George Law, November 1, 1858, filed his answer to the libel, and prayed that the same might be pronounced against and dismissed. Claimant in his answer set forth several objections to the payment of the bond, in substance as follows:

1. Collusion between captain of the bark and libellants to defraud claimant.
2. Captain had no authority to give the bond.
3. That interest reserved was unconscionable.
4. No necessity for making repairs on the bark.
5. No survey before making repairs.
6. No protest by captain.
7. That captain had funds and credit to raise money for repairs without giving bottomry bond.
8. That claimant had credit at Rio Janeiro, on which money could have been raised.
9. That captain did not sufficiently advertise for a loan.

Considerable evidence was taken by both parties, and on the 27th of February, 1860, the district court rendered a decree in favor of libellants for $11,672 10, and interest thereon at the rate of 5 per cent. per annum, from time of judicial demand, July 3, 1858, until paid.

From this decree claimant, Law, took an appeal to the circuit court. The case was heard there before Mr. Justice Campbell, who made an order, dated November 12, 1860, for the continuance of the cause, with leave to the parties to take further testimony. In connection with this order, Mr. Justice Campbell delivered an opinion in the cause, in which he says: "I reserve my opinion, upon the merits of the case as it now stands."

The cause was in this condition when the rebellion broke out.

Nothing further was done in the cause until January 13, 1863, when a motion was made in the United States provisional court for the State of Louisiana, Judge Peabody presiding, for a rule, requiring the claimant, George Law, a resident of the city of New York, to show cause why the cause should not be removed from the circuit court of the United States to the said provisional court. The rule was granted. (Transcript, p. 225.)

On the 25th of March, 1863, a stipulation was filed in said provisional court, signed by the proctors of the parties, consenting to the transfer of the cause to the provisional court. The cause was heard in the provisional court, and on the 13th of July, 1864, Judge Peabody made a decree, affirming the decree of the district court. The cause is now here on appeal, brought by the claimant, Law.

It is proper here to call attention to the organization of the provisional court and the legislation of Congress upon the subject.

The court derives its existence from an order of President Lincoln, which is in the words following:

> "EXECUTIVE MANSION,
> "WASHINGTON, *October* 20, 1862.
>
> "The insurrection which has for some time prevailed in several of the States of this Union, including Louisiana, having temporarily subverted and swept away the civil institutions of that State, including the judiciary and judicial authorities of the Union, so that it has become necessary to hold the State in military occupation, and it being indispensably necessary that there should be some judicial tribunal existing there capable of administering justice, I have therefore thought it proper to appoint, and I do hereby constitute ———, a provisional court, with authority to hear, try, and determine all causes, civil and criminal, including causes in law, equity, revenue, and admiralty, and particularly all such powers and jurisdiction as belong to the district and circuit courts of the United States, conforming his proceedings, as far as possible, to the course of proceedings and practice which has been customary in the courts of the United States and Louisiana; his judgments to be final and conclusive. And I do hereby authorize and empower the said judge to make and establish such rules and regulations as may be necessary for the exercise of his jurisdiction, and to appoint a prosecuting attorney, marshal, and clerk, according to such practice and proceedings as before mentioned and such rules and regulations as may be made and established by said judge. These appointments are to continue during the pleasure of the President, not extending beyond the military occupation of the city of New Orleans, or the restoration of the civil authority in that city and the State of Louisiana. These officers shall be paid, out of the contingent fund of the War Depart-

ment, compensation as follows: The judge at the rate of $3,500 per annum; the prosecuting attorney, including the fees, at the rate of $3,000 per annum; and the clerk, including the fees, at the rate of $2,500 per annum; such compensation to be certified by the Secretary of War. A copy of this order, certified by the Secretary of War, and delivered to such judge, shall be deemed and held to be a sufficient commission.

"Let the seal of the United States be hereunto affixed.

"[L. S.] ABRAHAM LINCOLN.

"By the President:

"WILLIAM H. SEWARD,
"*Secretary of State.*"

POINTS AND AUTHORITIES.

I. The decree of Judge Peabody was a nullity, for want of jurisdiction.

1. Because the President had no power, by virtue of conquest, upon the suppression of the insurrection at New Orleans, to establish such a judicial tribunal as the "Provisional Court of Louisiana."

His power over such portions of the territory of the United States as was recovered from rebellion was more limited than his power over foreign territory conquered in war. The President, as commander-in-chief, may erect a military government for a conquered territory. (Cross *vs.* Harrison, 16 How., 164; Holbrook *vs.* The United States, 22 Law. Rep., 226.) So, upon the conquest of New Mexico, the executive authority of the United States properly established a provisional government, which instituted a judicial system, the legality of which was recognized by the Supreme Court. (Leitendorfer, *et al. vs.* Webb, 20 How., 176.) The conquest of a foreign country gives absolute sovereign rights. But a different rule prevails upon the suppression of an insurrection or rebellion. Then the government, the successful party, only re-establishes its legitimate authority.

This distinction is expressly noted by Judge Sprague in the case of the Amy Warwick, in which he says, "No success in a civil war can extend the power of the government beyond the limits prescribed by the organic law.

"The conquest of a foreign country gives absolute sovereign rights, but no nation makes a conquest of its own territory.

"When the Government takes possession of any rebel district, it acquires no new title, but merely vindicates that which previously existed."

The Amy Warwick, 2 Spr., 143.

If New Orleans had been foreign territory, conquered in war, then the President, as representing the conquering power, would have had the right to establish such courts as the conqueror could establish. But, New Orleans having been a part of the United States, the President had not the powers, as conqueror, he would have in reference to foreign conquests. Upon the capture of New Orleans, the powers of the President were such as flowed from his position as commander-in-chief, enabling him to do what was necessary for the safety of the army and city, but he did not have the powers of a conqueror, which alone could authorize the establishment of judicial tribunals. After the suppression of the rebellion in New Orleans, it was for the legislative department of the Government of the United States to establish the institutions of civil government in that city, and this by virtue of the obligation of the guaranty to each State of a republican form of government, and the powers resulting from this provision of the Constitution. Under this great power conferred on the United States, Congress, upon the suppression of rebellion in part or in the whole of a State, could legislate to establish such courts or other civil institutions as they deemed advisable for the purpose of re-establishing the republican form of government in the State. But the President alone, as representing the conquering power, could not do this.

So far, therefore, as the establishment of the court in question is attempted to be put on the ground of conquest, as was done in reference to the provisional governments and courts in California and New Mexico, we submit that there is no foundation for such a conclusion.

2. Because, since whatever power the President had in the

premises was as commander-in-chief, and derived from military necessity, without undertaking to say what the President could or could not do as a matter of military necessity, we submit that this power, arising from military necessity, cannot be extended beyond doing such acts as were necessary for the safety of the army and the suppression of the rebellion. Beyond this his acts would be *ultra vires*. Now, we submit that no reason of military necessity, taken in the largest legitimate sense, could require the establishment of a court in New Orleans to hear and determine causes of admiralty jurisdiction pending in the courts of the United States between aliens and a loyal citizen living in a loyal State, neither party having any connection whatever with the rebellion. It is to be noted that the judge of this very circuit court was actually in the discharge of other of his judicial duties in Washington city, and there was nothing to prevent his holding the circuit court in New Orleans.

So far, therefore, as the jurisdiction of Judge Peabody is sought to be maintained in this case, on the ground of military necessity, it cannot succeed.

3. Because the judicial power exercised in this case by Judge Peabody was a part of the judicial power of the United States, and such exercise of judicial power on his part is unconstitutional.

The Constitution provides as follows:

> "ARTICLE III. SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish."

This is conclusive upon the point.

It is impossible to imagine a stronger instance of the exercise of "the judicial power of the United States" than was done by Judge Peabody in this case. He removed the case from the United States court and determined it.

The Supreme Court have already adjudicated upon this very point. In Jecker *et al. vs.* Montgomery, (13 How., 498,) the court say:

"Under the Constitution of the United States, the federal power of the General Government is vested in one supreme court, and in such inferior courts as Congress shall from time to time ordain and establish. Every court of the United States must, therefore, derive its jurisdiction and judicial authority from the Constitution or the laws of the United States; and neither the President nor any military officer can establish a court in a conquered country, and authorize it to decide upon the rights of the United States or of individuals in prize cases, nor to administer the law of nations.

"The courts established in Mexico during the war by the commanders of the American forces, were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property while it was occupied by the American arms. They were subject to the military power, and their decisions under its control, whenever the commanding officer thought proper to interfere. They were not courts of the United States, and had no right to adjudicate upon a question of prize or no prize, and the sentence of condemnation in the court of Monterey is a nullity, and can have no effect upon the rights of any party."

Jecker *et al. vs.* Montgomery, 13 How., 498.

It is to be noted that the present case is one of admiralty jurisdiction, and as the President could not establish a prize court, so he cannot establish an admiralty court.

4. Because the President's order, establishing the "provisional court of Louisiana," did not, in point of reasonable construction, authorize that court to take jurisdiction of cases pending in the United States courts; and Judge Peabody, therefore, had no authority to take jurisdiction of this case.

Perhaps it may be said the claimant consented to the jurisdiction. But without going into the reasons for this consent, which we can readily understand were caused by the pressure of circumstances little less than *duress*, it is sufficient to say that consent cannot give jurisdiction.

5. Because the President had no power under the exercise of martial law to establish such a court. Martial law, the mere will of the commanding general, is only excused when

war renders it impossible for the courts to sit. The very fact of the establishment of this court and its peaceful continuance shows that there was no condition of things existing to excuse martial law, and hence the court cannot be derived from the existence of martial law. If martial law be capable of existence in this country at all as a legal fact, it can only be amid such violence as renders it impossible for the courts to sit. So that the establishment of a civil court, even such as this, shows that a state of things existed in New Orleans incompatible with martial law. This court, therefore, cannot be derived from martial law.

6. Because at the time the decree in this case was rendered, June 13, 1864, New Orleans was not in fact or in law in an insurrectionary condition. (The Venice, 2 Wallace, 258.)

In this connection it is to be noted,

a. That the President, by his proclamation of May 12, 1862, declared the blockade of New Orleans should case from June 1, 1862, and that commercial intercourse might be carried on, except as to contraband of war.

b. The President's proclamation of March 31, 1863, (13 Stats. at Large, p. —,) excepted "the port of New Orleans" from the condition of insurrection.

c. Members of Congress were elected in New Orleans in 1862, and were admitted to their seats.

d. United States courts opened.

e. The commanding general, by his order of January 11, 1864, which he announced that he issued "in pursuance of authority vested in him by the President of the United States," provided, in reference to certain popular elections in New Orleans, that certain State officers, "when elected, for the time being, and until they are appointed by competent authority, shall constitute the civil government of the State, under the constitution and laws of Louisiana."

f. Governor, attorney general, and other State officers elected.

g. A convention for the revision of the State constitution called.

These various occurrences show that the city of New Orleans was no longer in an insurrectionary condition when Judge Peabody's decree was rendered.

We submit, therefore, that in the condition of things in New Orleans at the time of the decree, the provisional court, if it had ever had any validity, no longer had it.

It is to be noted, that the very order establishing Judge Peabody's court limits its existence to "the restoration of the civil authority in that city, (New Orleans,) and the State of Louisiana."

As this court could only, in any aspect, spring from military necessity, it must, of course, be limited by such necessity. The restoration of civil authority annulled the court. So that if the court ever had legal existence, it no longer had it after the restoration of civil authority.

7. Because the provisional court had no jurisdiction of claimant George Law's case, inasmuch as, being a loyal citizen, living in a loyal State, he had a constitutional right to have his case decided by the United States judiciary, as known to the Constitution.

8. Because the provisional court could not render a decree against claimant; for to do so would be to deprive him of property "without due process of law," in contravention of 5th amendment of Constitution.

An executive officer cannot make an order to violate this constitutional guaranty. Property and life are put on the same footing.

9 Attorney Generals' Opinions p. 200.

The meaning of this provision is, that no one can be deprived of his property but in the due administration of the law before the legal judicial tribunals.

Wynehamer *vs.* People, 13 N. Y. R., 393.
Taylor *vs.* Porter, 4 Hill N. Y. R., 145.

We conclude, therefore, that the decree of Judge Peabody is a nullity.

war renders it impossible for the courts to sit. The very fact of the establishment of this court and its peaceful continuance shows that there was no condition of things existing to excuse martial law, and hence the court cannot be derived from the existence of martial law. If martial law be capable of existence in this country at all as a legal fact, it can only be amid such violence as renders it impossible for the courts to sit. So that the establishment of a civil court, even such as this, shows that a state of things existed in New Orleans incompatible with martial law. This court, therefore, cannot be derived from martial law.

6. Because at the time the decree in this case was rendered, June 13, 1864, New Orleans was not in fact or in law in an insurrectionary condition. (The Venice, 2 Wallace, 258.)

In this connection it is to be noted,

a. That the President, by his proclamation of May 12, 1862, declared the blockade of New Orleans should case from June 1, 1862, and that commercial intercourse might be carried on, except as to contraband of war.

b. The President's proclamation of March 31, 1863, (13 Stats. at Large, p. —,) excepted "the port of New Orleans" from the condition of insurrection.

c. Members of Congress were elected in New Orleans in 1862, and were admitted to their seats.

d. United States courts opened.

e. The commanding general, by his order of January 11, 1864, which he announced that he issued "in pursuance of authority vested in him by the President of the United States," provided, in reference to certain popular elections in New Orleans, that certain State officers, "when elected, for the time being, and until they are appointed by competent authority, shall constitute the civil government of the State, under the constitution and laws of Louisiana."

f. Governor, attorney general, and other State officers elected.

g. A convention for the revision of the State constitution called.

These various occurrences show that the city of New Orleans was no longer in an insurrectionary condition when Judge Peabody's decree was rendered.

We submit, therefore, that in the condition of things in New Orleans at the time of the decree, the provisional court, if it had ever had any validity, no longer had it.

It is to be noted, that the very order establishing Judge Peabody's court limits its existence to "the restoration of the civil authority in that city, (New Orleans,) and the State of Louisiana."

As this court could only, in any aspect, spring from military necessity, it must, of course, be limited by such necessity. The restoration of civil authority annulled the court. So that if the court ever had legal existence, it no longer had it after the restoration of civil authority.

7. Because the provisional court had no jurisdiction of claimant George Law's case, inasmuch as, being a loyal citizen, living in a loyal State, he had a constitutional right to have his case decided by the United States judiciary, as known to the Constitution.

8. Because the provisional court could not render a decree against claimant; for to do so would be to deprive him of property "without due process of law," in contravention of 5th amendment of Constitution.

An executive officer cannot make an order to violate this constitutional guaranty. Property and life are put on the same footing.

9 Attorney Generals' Opinions p. 200.

The meaning of this provision is, that no one can be deprived of his property but in the due administration of the law before the legal judicial tribunals.

Wynehamer *vs.* People, 13 N. Y. R., 393.
Taylor *vs.* Porter, 4 Hill N. Y. R., 145.

We conclude, therefore, that the decree of Judge Peabody is a nullity.

II. It is material to inquire into the effect of the act of Congress approved July 28, 1866.

By the first section of this act Congress directs the causes pending in the United States provisional court of Louisiana to be transferred to the district and circuit courts of the United States for the State of Louisiana, as either of said courts might be the proper one to take jurisdiction of the same.

By the second section of this act it is provided, that in such suits as could not have been instituted in the district or circuit courts, the records shall remain in the district court, without further action thereon.

Section third of said act provides as follows:

20 July 1868

> "That all judgments, orders, decrees, and decisions of the United States provisional court for the State of Louisiana, relating to the causes hereby transferred to the district court of the eastern district of Louisiana, or to the circuit court held in said district, shall at once become the judgments, orders, decrees, and decisions of said district court or said circuit court, unless the same are inconsistent with the rules and proceedings thereof, and may be enforced, pleaded, and proved as the judgments, orders, decrees and decisions of said district court or said circuit court."

1. The first observation we make on this section is, that it does not validate the decree of Judge Peabody in this cause, because the decrees of the provisional court are to become the decrees of the circuit, "unless the same are inconsistent with the rules and proceedings thereof."

We submit that the decree in this case is "inconsistent with the rules and proceedings" of the circuit court. We ask, what rule in the circuit court, or what "proceeding" therein, is consistent with the recognition of the validity of a decree rendered in the provisional court on a cause such as the present, once pending on appeal in the circuit court?

The only decree, in a cause pending in the circuit court, consistent with its "rules and proceedings," is a decree rendered by said court. If the said cause is taken from the circuit court, and decree rendered by the provisional court, it is

By the acts 1862 & 1864
court of the Provisional
[illegible] [illegible] a circuit court

certainly a decree "inconsistent with the rules and proceedings thereof."

We conclude, therefore, that a just interpretation of the third section expressly excludes the present decree from validation.

2. Should we be mistaken on the point last made, then we urge, that, so far as the third section undertakes to make the decrees of the provisional court decrees of the circuit court, it is null and void, as being contrary to the Constitution.

According to the Constitution, "The judicial power of the United States *shall* be vested in one supreme court, and in such inferior courts as the Congress may from time to time establish." (Article III.)

So it likewise provides, "All legislative powers herein granted *shall* be vested in a Congress of the United States." (Article I, sec. 1.)

So, also, it provides, "The executive power *shall* be vested in a President."

The language of the Constitution is not permissive, it is imperative, in these great grants of power.

"The judicial power" "*shall* be vested" in the courts.

This prohibits it being vested anywhere else, or exercised in any other manner.

Now, to make a particular form of decision the decree of a court can, under our Constitution, only be done by the court itself. In this case it is sought to be done by a legislative act, but this act is clearly invalid.

Suppose Congress should pass an act declaring that Judge Peabody's decrees should be the decrees of the Supreme Court of the United States. Would not the unconstitutionality of such legislation be apparent? Yet there is no difference in principle from such supposed legislation and what has been done in this cause.

We assume, as a proposition beyond controversy, that there can be no such thing as a decree of a circuit court, except it is rendered by the judge of such court. Under our Constitution, it is impossible there can be a decree of the court but by the action of the judge. But Congress had attempted to make the decree of Judge Peabody the decree of the circuit court. This we maintain is attempting a constitutional impossibility.

Further, we maintain that Judge Peabody's decree was either a valid decree or a nullity. If it was a valid decree, this act of Congress could not make it more valid. If it was a nullity, then Congress could not give it validity. Because to do so would be to take the property of a citizen and transfer it to others, which is forbidden by the Constitution, which provides that "no person shall be deprived of * * property without process of law." (Article V, amendment.)

In the case of Pennsylvania *vs.* Wheeling and Belmont Bridge Co., (18 Howd., 431,) the court say: "It is urged that the act of Congress cannot have the effect to annul the judgment of the court already rendered. This, as a general proposition, is certainly not to be denied, especially as it respects adjudications upon the private rights of parties."

If Congress could not, so far as private rights were concerned, annul a judgment previously rendered, by parity of reason it would seem Congress could not give validity to a void judgment.

In the case of Nock *vs.* The United States, (2 Nott & Huntington,) the court say: "Congress has no judicial power, and therefore cannot award a new trial or reverse a judgment."

If Congress cannot reverse a judgment, they cannot surely create a judgment.

In the case of Beatty *vs.* The United States, (Devereux, C. C. R., 251,) the court say: "No part of the judicial power can be conferred on an executive officer." If Congress cannot give judicial power to any persons but the judges of the courts, it would seem clear that they could not exercise it themselves. To say what shall be the decree of a court is to exercise judicial power.

In conclusion, upon this point, we ask for any precedent of such legislation as this, either in Great Britain, from whence we derive our legal institutions, or in any one of the United States, or in the previous action of Congress. We undertake to say no such precedent can be found. The fact that no such precedent can be found in English or American history is a strong argument against the existence of any such power as is claimed by Congress in this instance.

We submit, therefore, with entire confidence, that Judge Peabody's decree in this cause derives no particle of additional strength from the action of Congress on the subject.

III. Should a different view, however, be taken by the court on the question of the nullity of the decree, then it is submitted that, in the exercise of a proper discretion, the court will send the case back to the circuit court for a new hearing, because of the loss of a portion of the record, without any fault on the part of the appellant. (See Transcript, p. 259.)

IV. Should the court decline to send the case back to the circuit court for a new hearing, then we submit that Judge Peabody's decree was erroneous, and contrary to the law and evidence.

C. Cushing,
Of Counsel.

Supreme Court of the United States.

THE BARK GRAPESHOT, GEORGE LAW, Claimant, Appellant,

vs.

WALLERSTEIN, MASSET & Co.

No. 179.

2 Wall [illegible]
[illegible]

SUPPLEMENTAL BRIEF.

As to the merits, Mr. Justice Campbell, in his opinion in this case, (Transcript, p. 219,) very properly says:

"The material inquiry in the present case is, what is a legal advance to the master? It is an advance made after due inquiry that such money was wanting to defray the expenses of the ship for repairs, the purchase of necessaries, and other things indispensable to the completion of the voyage. *The lender is bound to use due care and caution in making such advances;* to be reasonably satisfied by inquiries that the money is wanting for the purposes I have mentioned."

We submit that the lenders in this case did not use such due care and caution in making their advances.

I. We start with the proposition, that the captain acted throughout in violation of his duty, and in fraud of the owner's rights.

a. He violated his orders in not promptly returning from the Mediterranean to New York.

His orders were to sail from New York to Constantinople, deliver his cargo there, and obtain such freights as he could, and return with reasonable despatch to New York, or some

2 Wall [illegible]
7 Wall 564

other Atlantic port of the United States. (Transcript, pp. 15, 94, 95.)

The master violated his orders, therefore, by sailing to South America, and making voyages to Cape Verde islands.

b. The master embezzled all the earnings of the bark previous to her final voyage from Rio to New Orleans.

The freight money on arrival at Constantinople was $2,916 80. (Transcript, p. 14–100.)

Draft on George Law for $233 10.

Sovereigns borrowed worth $900. (Transcript, p. 17.)

Produce of salt taken to Rio. (Transcript, p. 100, 111, 136.) He entered his first cargo of salt at Rio at $6,000.

Gold secreted by him. It appears that Howes insured $7,380 of American gold for Clark, May 28, 1864.

Copper taken from bark. Howes swears that, under instructions from Clark, he insured copper shipped on Morning Star for $2,500. (Transcript, p. 204.)

Total amount of funds traced to Clark's hands:

Freight received at Constantinople	$2,916	00
Draft on Law	323	10
Sovereigns borrowed	960	00
Copper from Grapeshot	2,500	00
Gold insured	7,380	00
	20,079	28

Master violated his duty by remaining idle in port of Rio six and a half months. (Transcript, p. 137.)

II. At the outset of our inquiry, as to the exercise of "due care and caution" by the lenders in this case, we have the fact established, that the master's conduct was fraudulent.

One of the first inquiries to be made by the lender should be as to the good faith of the master.

Now, we submit, that if the lenders in this case had made the slightest inquiry, their suspicions would have been excited.

Production of master's orders would have shown his violation of them.

Inquiry as to what he had done with his freight money received at Gibraltar, and the produce of salt sold by him at

Rio, would have shown still further dereliction of duty, and awakened suspicion.

Then the long period the master lay idly in port, a notorious fact, was sufficient to excite the suspicion of the lenders, and put them upon strictest inquiry.

III. The next inquiry by the lenders should have been as to the necessity of repairs. To this end, a preliminary survey should, as a matter of due care and caution, have been made. The United States have made provision for surveys of ships alleged to be unseaworthy.

1 U. S. Statutes at Large, p. 132.
5 " " " p. 396.
9 " " " p. 441.

If the direction of these statutes had been followed, a preliminary survey would have shown the true condition of the bark.

IV. Supposing the necessity of repairs established, then the most important inquiry was whether the master could command the means for the repairs otherwise than by the bottomry bond, as in that event he would not have authority to bind the ship. (Parsons' Maritime Law, pp. 415, 416.) And here, we submit, that inquiry would have shown that the means were accessible to the master in several ways.

a. That he had funds in hand.
See printed statement in his behalf.

b. That he could obtain the funds on the credit of Mr. Law.
Transcript, p. 194.

The great wealth of Mr. Law, and the fact that an established house in Rio had formerly been agents of his in regard to his ships calling at Rio, strongly suggested the necessity of this inquiry.

The master has no power to bind the ship if he can borrow on the personal credit of the owner.

1 Parsons on Maritime Law, p. 416.
Tunno *vs.* Ship Mary, Bee's Rep., 120.

Forbes *vs.* Hannah, Bee's Rep., 348.
Rucker *vs.* Conyncham, 2 Pet. Adm., 295.
Cusseserio *vs.* Percy, 2 Dall., 194.
The ship Lavinia, *vs.* Barclay, 1 Wash. C. C., 49.
The ship Packet, 3 Mason, 355.
Patton *vs.* The Randolph, Gilpin, 457.
The Nelson, 1 Hagg. Adm., 169.
The Rhadamanthe, 1 Dods., 201.

V. Proper inquiry would have shown that the master was prosecuting a voyage at Rio in violation of his orders.

It is laid down that the master cannot raise money to perform a voyage in violation of the owner's orders; which voyage is, therefore, unlawful.

1 Parsons' Maritime Law, p. 420.
The Virgin, 8 Peters, 538, 552.
The Hunter, Ware, 249.
The Tartar, 1 Hagg. Adm., 1.
The Reliance, 3 Hagg. Adm., 66.

"If the necessity for the bond arises from his (the master's) acting contrary to the orders of his owners, he has no power to hypothecate the vessel."

1 Parsons' Maritime Law, 435.
The Mary Ann, 4 Notes of Cases, 376, 381.
10 Jurist, 253.

The master was in this condition of disobedience of orders when the bond in this case was given. The lenders did not exercise due "care and caution" in failing to inquire upon this point.

In every aspect this case can be looked at, we submit, the lenders did not exercise due "care and caution," and therefore the bond taken cannot be enforced.

VI. In any point of view, the bottomry bond could only be good for repairs and outfit, and would not cover previous indebtedness assumed by the master.

Hurry *vs.* Ship Alice, 1 Washington C. C. R., 293.

A large portion of the proceeds of the bond in this case went to pay prior indebtedness. To this extent there should at least be abatement.

(See accounts of Rostrum, Dutton & Co., and Esling & Alvaranger, Transcript, pp. 69, 73.

VII. Reference to the testimony of the acting mate and mariners of the Grapeshot shows that the repairs were entirely unnecessary, to the extent to which they were made, and the charges exorbitant to the last degree.

(See depositions of Eilers, Myers, Fisher, and Hellman. Transcript, pp. 102, 103, 104, 105, 106, 107, 108, 109, 110.)

C. CUSHING,
Counsel for Appellant.

Supreme Court of the United States.

DECEMBER TERM, 1868.

THE BARK GRAPE SHOT,
GEORGE LAW,
CLAIMANT AND APPELLANT,
vs.
WALLERSTEIN, MASSET & CO.

No. 179.

BRIEF OF COUNSEL FOR WALLERSTEIN, MASSET & CO.

On the 15th of April, 1858, at Rio de Janeiro, Brazil, Joseph S. Clark, master of the American bark Grape Shot, being obliged to borrow for the use of said vessel, and for the purpose of fitting her for sea, took up nine thousand seven hundred and sixty-seven dollars and forty-five cents from Wallerstein, Masset & Co., of Rio, to whom he gave a bottomry bond on the vessel and freight money, stipulating for the payment of that sum, with nineteen-and-a-half per cent. premium for the voyage, then about to be undertaken to New Orleans, Louisiana, payment to be made within twenty days after the arrival of the bark.

See Bond, Rec., pp. 3 and 4.

The Grape Shot made her voyage to New Orleans, and the bond not being paid, on the 3d July, 1858, was seized by the U. S. marshal under an admiralty warrant issued on the libel of the obligees in the bond.

See Warrant and Return, Rec., p. 5, and Libel, Rec., pp. 1 to 3.

The bark was claimed by George Law, of New York, who refused to bond her.

See Rec., p. 8.

And, on the suggestion to the court of this fact, and of her certain deterioration, she was ordered to be sold, and the proceeds placed in the registry of the court.

See Rec., pp. 7 to 9.

The sale took place under this order and produced $14,200, which, after deducting costs of the sale, left $13,805.85 deposited in the registry.

See Rec., p. 9.

The freight earned by the vessel, which was also covered by the bond, was likewise deposited in the registry, viz, $2,055.20, (see Rec., p. 7,) making the whole amount in the registry $15,861.05.

An exception was put in by the claimant that the christian names of each of the members composing the libellants' firm had not been set forth in the libel, and that a detailed bill of items of the repairs necessary to the bark, and for which the money had been borrowed on bottomry, was not filed with the bill. This exception was overruled.

See Rec., pp. 10 and 11.

The claimants then filed their answer, which will be found on Rec., pp. 12 to 31.

The burthen of this answer is that the bottomry bond and the suit instituted thereon were fraudulent contrivances of said libellants, and said Clark, the master of the Grape Shot, and others, combining and confederating together to cheat and defraud the respondent, George Law.

See Rec., p. 14, top.

The answer further admits the ownership of George Law, and that Clark was master, and also avers him to have been half owner of the Grape Shot.

Rec., p. 12.

It admits the allegations concerning the lading of the bark at Rio, and her voyage to New Orleans, and that respondent was advertised of the loan on bottomry by the master before leaving Rio Janeiro.

Rec., pp. 12 and 13.

It gives a long account of the various voyages of the Grape Shot in the Mediterranean and on the coast of South America, (see Rec., pp. 14 to 19;) it charges that Clark, the master, stripped the bark in Rio of good metal and sheathed her again with bad; falsely pretended she needed repairs, and, putting only some slight repairs upon her, charged false and exaggerated sums for such pretended repairs, (Rec., pp. 19 to 21;) and also avers that the libellants could, by proper and reasonable inquiry, have ascertained that the bark needed no repairs, (Rec., p. 21;) that all the repairs were made and the provisions and supplies furnished before any advance was made by libellants, (Rec., p. 24;) alleges that no previous survey was made to show that repairs were necessary, (Rec., p. 24;) that the master made no protest of any injury received by the bark so as to bind the underwriters; (Rec., p. 25;) denies that the master was without funds to pay the expenses, (Rec., p. 26;) denies that respondent was without credit at Rio, and avers that any American house in Rio would have made the advance without hypothecation of the vessel, (Rec., p. 28;) avers that the master ought to have advertised for a loan, and denies that he did so, (Rec., p. 29;) avers that claimant intends to bring a suit against libellants for damages. (Rec., p. 30.)

On the 8th November, 1858, the libellants, with leave of the court, filed an amended libel, with the accounts and detailed bills of items, showing the various amounts, making up the aggregate amount borrowed on the hypothecation of the vessel and freight money.

See Rec., p. 48.

The accounts themselves are found annexed to the return of commission, with depositions of the witnesses examined on behalf of libellants at Rio.

Rec., pp. 55 to 72.

This met one of the objections urged by claimant in his exceptions filed to the libel, (see Rec., p. 10,) which the district court, however, had not sustained. (See Rec., p. 11.) The other ground of exception was that the christian names of the libellants were not set forth, (see Rec., p. 10,) and which also was not sustained by the district court. (See Rec., p. 11.) This latter view of the district court was not concurred in by the judge of the circuit court, who examined the case on appeal, and decreed that names of the persons composing the commercial firm of libellants ought to be given, (see Rec., p. 221,) which was subsequently done, as will be seen in the depositions taken at Rio. (See Rec., pp. 233 to 255.

The U. S. district court for the (then) eastern district of Louisiana, where the proceedings were carried on, made a decree in favor of the libellants for the amount claimed, with lien and privilege on the proceeds of the Grape Shot and her freight money, with interest, on 27th February, 1860.

See Rec., pp. 86 and 87.

From this decree the claimant, George Law, appealed to the next term of the circuit court of the United States for the eastern district of Louisiana.

See Rec., p. 88.

The cause was heard on appeal in the circuit court before Judge Campbell, who ordered, on 12th November, 1860, the cause to be continued, with leave to the parties, respectively, to re-examine their witnesses, or to take such further testimony as they may be advised under commission.

See Rec., p. 221.

An effort was made by libellants to carry out these instructions of the judge, by filing interrogatories, on the 20th November, 1860, to be answered by witnesses in Rio, and giving notice to claimant.

See Rec., pp. 221 to 224.

But this effort was abortive. The insurrectionary movements which had already commenced in Louisiana matured into secession on the 26th January, 1861, and the U. S. courts and all lawful authority, judicial or other, ceased in the State.

On the 20th October, 1862, the President of the United States issued an executive order establishing a provisional court in Louisiana. The order declares the overthrow of the civil institutions of the State, including the judiciary and the judicial authorities of the Union, by armed rebellion, and declares also the indispensable necessity of having some judicial tribunal there capable of administering justice; and proceeds to appoint a judge, with authority to hear, try, and determine all causes, civil and criminal, including causes in law, equity, revenue, and admiralty, and confers particularly on him all such powers and jurisdiction as belong to the district and circuit courts of the United States, *his judgments to be final and conclusive*. The order was signed by the President and countersigned by the Secretary of State. It was lodged in the War Department, and certified by the Secretary of War and the chief clerk of the department.

On the 29th of December, 1862, the Military Governor of Louisiana, Brigadier General George F. Shepley, announced the organization of said court, and of the appointment of the judge and the other court officers, directing all judgments, decisions, and decrees of said court, and all acts of said officers by them done, under the authority of the order of the President constituting it, to be respected and obeyed accordingly.

On the 13th of January, 1863, the counsel of Wallerstein, Masset & Co. obtained an order from the said provisional court upon the claimant, George Law, directing him to show cause why the record of this case should not be transferred to the said provisional court, and the case then proceeded with according to law.

Rec., pp. 324 and 325.

On the 25th of March, 1863, the libellants and claimant entered into a written agreement for the transfer of the cause to the said provisional court, stipulating for a postponement of the trial until December, 1863, and for leave to both parties to re-examine their witnesses, and take further testimony.

Rec., pp. 225 and 226.

On the same day, by a joint motion of libellants and claimant, the cause was transferred to the provisional court, and an order of court entered in pursuance of the agreement above stated.

See Rec., p. 226.

On the 12th of June, 1863, the libellants applied for and obtained a commission to examine witnesses in Rio, which was returned on 23d of December, 1863.

See Rec., pp. 226 to 248.

No new evidence was sought for by the claimant.

The case was submitted on evidence and argument on 30th of December, 1863.

See Rec., p. 249.

On the 13th of June, 1864, a decree was entered by the said provisional court in favor of libellants, confirming the decree of the U. S. district court.

See Rec., p. 255.

The act of Congress approved July 28, 1866, provides that all suits, &c., in the said United States provisional court for the State of Louisiana, with the records thereof, be transferred, according to their nature, to the district or circuit court in Louisiana respectively, and that all judgments, orders, decrees, and decisions of the said provisional court shall at once become the judgments, orders, decrees, and decisions of the district or circuit court respectively, and may be enforced, pleaded, and proved as the judgments, orders, decrees, or decisions of said district court or said circuit court.

See 14 Statutes at Large, p. 344.

Availing himself of the provisions of this act, the claimant, George Law, on the 3d of December, 1866, moved in the circuit court of the United States for the district of Louisiana that the record in the case be removed to that court, and that the judgment of the provisional court therein be taken and considered as the judgment of the circuit court.

See Rec., p. 256.

On the 6th of December, 1866, the claimant, George Law, obtained an order of appeal from said decree to this court, returnable here on the first Monday of December, 1867.

See Rec., pp. 257, 258.

POINTS.

1st. The war of the rebellion was a civil war; the inhabitants of the rebel territory were public enemies of the United States, and the latter had the same rights and powers against the former which could be exercised in regard to enemies in the case of a foreign war.

Prize Cases, 2 Black, p. 666, *et. seq.*

2d. The hostile soil and inhabitants of Louisiana, conquered by the arms of the United States, were held, controlled, and governed by the military power of the United States only, and a court was, in the judgment of the Commander-in-Chief, necessary to execute his powers and duties; such court was, therefore, lawfully constituted.

Cross *vs.* Harrison, 16 Howard, p. 164, *et. seq.*
Leitemsdorfer *vs.* Webb, 20 Howard, p. 176.

3d. The only exception that has been suggested to the power of the Executive in the organization of courts in a conquered district is found in the case of Jecker *vs.* Montgomery, (13 Howard, p. 298, *et. seq.*,) which, while admitting the power to establish all other species of courts, holds that it does not extend to the establishment of prize courts. That case, if it be law, does not affect the present one, which is not a prize case.

4th. The "provisional court" in Louisiana, founded by lawful authority, was not a constitutional court over which this court could exercise appellate jurisdiction; it was analogous to the territorial courts; and as in these, the creative power, Congress, has the right to vest admiralty jurisdiction, so in the "provisional court," the creative power, the Executive, had the right to vest a like jurisdiction.

See Canter *vs.* American Ins. Co., 1 Peters, 511.

5th. By the order of the Executive constituting this provisional court in Louisiana, its judgments were to be final and *conclusive, i. e.*, without appeal.

6th. If there be any doubt as to the right of the Commander-in-Chief of the army and navy to establish, by his own will and power, the "provisional court," then that defect suggested by the doubt is cured by the act of Congress of 28th of July, 1866, (14 Statutes at Large, p. 344,) which recognizes and confirms the court with all its acts and doings.

7th. In the act quoted, Congress has declared that the judgments of the provisional court shall at once become the judgments of the circuit court; this, if it can be done at all by Congress, can only be done on the theory that there was a judgment to be transferred; if the provisional court and its judgments were absolute nullities, then to declare that such void and pretended judgment should become the judgment of the circuit court would be nothing less or other than making a judgment of the circuit court by act of Congress, which cannot be done.

8th. Admit Congress had the right to transfer the judgment of the provisional court so as to make it as one of the circuit court, still Congress could only transfer it as it was found, but could not modify or change its character; now, the judgment of the provisional court was not subject to appeal, and with that essential characteristic it is transferred to the circuit court.

9th. Congress has not attempted to modify this essential characteristic; the act of 28th July, 1866, declares that the judgment transferred "may be enforced, pleaded, and proved" as other judgments of the circuit court, but does not say they may be revised by appeal or writ of error.

14 Statutes at Large, p. 344.

10th. This court, then, has no appellate jurisdiction in this case; the judgments transferred from the provisional court of Louisiana are "cases" of "exception."

See U. S. Const., Article III, sec. 2, par. 2.

11th. If this court can take jurisdiction of the case, the judgment of the lower court should be confirmed; on which the following points are suggested.

12th. The fraud charged in the answer, and so earnestly and repeatedly urged against the libellants, was formally withdrawn on the argument in the provisional court, and it was admitted that the loan was made by libellants in good faith.

Rec., p. 254.

13th. It is true the master can only hypothecate the vessel to secure the bond when there is a necessity for making the loan; and the lender must see that the necessity exists, but this he is presumed *prima facie* to have done.

The Fortitude, 3 Sumner, p. 268.
The Duke of Bedford, 2 Haggard, p. 300.
The Karnak, Law Reports for March and April, 1869, p. 288.

And in the case at bar there is no proof to the contrary.

14th. The burthen of proof was on the claimant to show the master had within his reach either the funds required for the exigency or a sufficient personal credit of the owner to raise funds without hypothecating the vessel, but no such proof was made.

The Mary Anne, 4 Notes of Cases, 379.

15th. The proofs made by the libellants were, that when the Grape Shot arrived in Rio, on the 1st January, 1858, she was in a very leaky condition.

See test. of Esling, Rec., p. 60.
See test. of McLenman, Rec., p. 60.

The bill of port charges and disbursements of the Grape Shot at Rio is (on Rec., pp. 69 and 70) annexed to the deposition of William Knight, one of the firm of Rostrom, Dutton & Co., to whom the bark was consigned. Its correctness and fairness are fully proved by the depositions.

See test. of Esling, Rec., p. 61.
See test. of McLenman, Rec., p. 61.
See test. of Knight, Rec., p. 61.

These witnesses show, in their further answers, that all the items of the accounts, to pay which the bond was given, are correct; that the labor, materials, and supplies were furnished, and that the prices are fair and reasonable.

Rec., pp. 61, 62, and 63.

The advertisement for tenders for a loan on bottomry was made in the form customary at Rio.

Rec., p. 61, *ad fin.*

The loan was necessary to pay off the bark's debts, and the agents of the bark received the amount.

Rec., pp. 63 and 64.

The advertisement for the loan on bottomry is found at Rec., p. 59, and the proposal of the libellants to take it at Rec., p. 63.

The testimony of Nathan and of Giraud, witnesses examined on behalf of libellants in New Orleans, on the trial of the cause, show the highly respectable character of the commercial firm of Rostrom, Dutton & Co. in Rio, who disbursed the bark and received the amount borrowed on bottomry to pay her debts with.

See Rec., pp. 77 and 78.

16th. No testimony was taken in Rio by the claimant, George Law, either in the district, circuit, or provisional court, at any time during the ten years this suit has been pending.

The libellant, under the leave granted by the provisional court to both parties "to re-examine their witnesses and take further testimony," (see Rec., p. 226,) took out a commission and filed interrogatories on the 12th June, 1863; (see Rec., pp. 325 and 327.) They are nineteen in number, and are found on Rec., pp. 227 to 229.

The testimony under this commission shows the full names and surnames of each of the members of the firm of libellants, (see Rec., p. 234;) that libellants had been established in commercial business in Rio for a long time.

See Rec., pp. 234, 237, 239, 241, 243, 244, 245, 247.

That the libellants were in the habit of advancing money on bottomry of vessels of all nations, and were more in that line of business than any house in Rio.

See Rec., p. 240, and test. of all the witnesses.

The depositions under this commission confirm the proofs previously made by libellants: that they acted in the matter in entire good faith; that the repairs and expenses, for which the Grape Shot became indebted in Rio, were necessary, and that the loan was advertised for and taken in the usual and regular manner.

The witness, Mr. Knight, one of the firm of Rostrom, Dutton & Co., the firm in Rio to which the Grape Shot was consigned, says, (see Rec., p. 241,) "the captain appeared to have full control of his vessel and the employment of her, and her owners never communicated with the consignees, although they had abundant time to do so had they suspected there was anything wrong, and desired to give any caution."

17th. Although the burthen of proof was on the claimant, George Law, to prove "fraud in the lender, (see Bouly

Paty, Vol. 2, p. 70, *Cours de Droit Commercial*, Paris, 1821,) or that the master had within his reach either the funds or a sufficient credit of the owner," (1 Parsons on Maritime Law, p. 419,) yet no witness in Rio has been examined to show this, where, had the facts been such, there must have existed witnesses to render it clear.

The depositions of the witnesses whom the claimant did examine will now be looked into.

The depositions of John Graham, (Rec., p. 194;) of W. S. Hanford, (Rec., p. 195;) of John Sims, (Rec., p. 197;) and of A. W. Thaxter, (Rec., p. 200,) were objected to in the court below; they should not have been received; they were taken *ex parte*, without notice to libellants, or opportunity to cross-examine. This court has said such a method of examination should never be resorted to unless in cases of absolute necessity.

See Walsh *vs.* Rogers, 13 Howard, pp. 286, 287.

The testimony itself was irrelevant and gave no information as to the points of contest in the case.

As to the depositions taken by the claimant under commission from the U. S. district court of the witnesses Eilero, Meyer, Fisher, and Hillman, they are simply monstrous. These witnesses were unknown seamen before the mast, quite young, and testify in the most reckless manner to everything required of them. The depositions of these witnesses occupy, without the accounts and documents they swore to, fifty-six printed pages of the record. The accounts and documents they swear they have examined, and which they pass upon, as if experts, are of a character to challenge the labor and talent of accomplished accountants. The judge of the U. S. circuit court in Louisiana, when the case was before him on appeal, said, with regard to these depositions, "the commissioner has not examined the witnesses on the interrogatories and cross-interrogatories so as to extract their information for the court. He has suffered the witnesses under some of the questions to argue the case of the claimant, and to support their argument with whatever of conjecture, suspicion, surmise, and hearsay they considered important for their cause. I do not remember ever to have met with a return to such a commission more discreditable to those who prepared it."

See Rec., p. 220.

These depositions can have no weight with the court.

18th. The claimant has entirely failed to show, as he was bound do do, and as he was invited and directed to do, if he could, by the judge of the circuit court, that the master of the Grape Shot had sufficient funds of the owners in Rio to meet the expenses, or that the owners—the captain and claimant—had such personal credit as would enable them to raise the money without a bottomry bond; and as the proof is plain that the repairs were necessary, and the lenders used proper precaution, the judgment below ought to be affirmed.

Respectfully submitted.

THOMAS J. DURANT,
for Libellants and Appellees.

Presumption in favor of
terms that he did make
the engine –
The Argus 8 Pet 55 –
Parsons [illegible] 146
The Buford 2 [illegible] 300
[illegible] 3 Sum 225 –
[illegible] 358
Marcks v [illegible]
Wilkinson v Nelson 8 Moore P.C. 459
That such evidence as to the
[illegible] [illegible] [illegible] excluded
Soames v [illegible] 3 Moore P.C. 1 –
[illegible] –
and the presumption of evidence
[illegible] the engine [illegible]
[illegible]
[illegible] 45 –